

THE EMERGENCE OF BOTTOM-UP ENFORCEMENT AND
FIRMS' HR/ LABOR RELATIONS RESPONSES IN CHINA

A Dissertation

Presented to the Faculty of the Graduate School

of Cornell University

In Partial Fulfillment of the Requirements for the Degree of

Doctor of Philosophy

by

Sun Wook Chung

August 2012

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Sun Wook Chung, Ph. D.

Cornell University 2012

This dissertation examines the labor law enforcement and compliance in contemporary China's workplaces. In explaining an increasing variation in compliance and employment relations practices across factories and regions, this dissertation proposes a "bottom-up" enforcement model, based on an extensive field research.

The emerging "bottom-up" model emphasizes the increasingly important role of two new actors: 1) workers themselves, specifically the second-generation workers, and 2) a wide variety of labor-related social intermediaries including the media, labor lawyers, various social organizations, HR/ labor professionals and online social networks. This dissertation argues that these actors increase employer concerns and uncertainty directly and indirectly, thereby motivating employers to respond to potential legal risk in the workplace either by more compliance with labor laws or by adoption of more sophisticated employment relations practices. It is emphasized that this emerging "bottom-up" enforcement remains within the state's guidelines, but contentious and consequential to employers.

This study deserves close attention, given the situation that existing explanations, be it state-oriented approach or non-state approach, are increasingly considered to be questionable.

Practically speaking, this study advances ongoing discussion regarding labor regulations, i.e., how to enhance compliance, and is particularly relevant to many developing economies, which suffer from state incapacity and/ or unwillingness to enforce labor laws.

BIOGRAPHICAL SKETCH

Sun Wook Chung was born and raised in Suwon, South Korea. Sun Wook studied at Seoul National University and Harvard University. His research centers broadly on the impact of globalization on the state, employers, and labor. From 2007 to 2012, he was a doctoral student at Cornell's ILR School. He is married to Sooin Bang, and they have two children – Seungil (Alex) and Jaehoon (Jason).

I want to dedicate this dissertation to Sooin, for her love, patience, and help.

*I also want to dedicate this to the workers that I met during my field research,
for the many life lessons I've learned from them.*

ACKNOWLEDGMENTS

I would like to express sincere thanks to my committee members, Sarosh Kuruvilla, Rosemary Batt, Diane Burton, and Alexander Colvin, for their insights, assistance, and encouragement, which helped me to complete this dissertation. I need to give a special acknowledgement to my chair, Sarosh Kuruvilla. Throughout my Ph.D. program, he knew how to push me when I needed and deserved it. I greatly appreciate his deep care for me. I also know that although he pretends to become harsh with his students, he is a very warm and considerate mentor. I thank Rosemary Batt for her encouragement, which I badly needed when I was at a loss at a middle stage of my Ph.D. life. I also deeply appreciate her time; despite the fact that she became quite busy over time, she always commented on everything I wrote. Diane Burton influenced my field research most strongly. During my field research in 2011, the feedback I received from my biweekly meetings with her and her seminar class acted as a field research compass. I also loved her passionate lectures, which always motivated me to study harder. I am thankful that Alexander Colvin enabled me to get some sense of the complex nature of HR/ labor issues. He provided me with a basis for my dissertation through his Conflict Resolution seminar. He is always gentle and mild and, looking back, his insightful comments pushed me to think about issues more thoroughly. I truly appreciate his guidance.

I also have to thank many of my colleagues who helped me throughout my Ph.D. life. They have always been warm and considerate. I would like to let them know that my wife Sooin also appreciate it very much. They include: Chad, Tami, Tash, Maite, Kelly, Todd, Jeff, Manfred, Hao, Eli (Prof. Friedman), Michel, Sunghoon, Gunjea, Yumi, Jiyoung, and Chanseok. I also express my special thanks to Dr. Chung Yousun and Dr. Kye Bongoh for their advice and support.

I also want to thank all of the workers, managers, government officials, activists, and other informants who I met during the field research. Special thanks to Yu Sung-joon, Lee Hee-sung, Song You-jin, Kim Hongyu, Mr. Xia, and Mr. Guo. I also thank Julie and Sally for their warm and wonderful help. I also like to all the workers who I met during my field research. I have learned many life lessons from them. I believe that these lessons will guide me through my future research.

Finally, I want to thank all of my family members: my parents, in-laws, and brothers. I really appreciate their unconditional love and support for me. Last but most important, I owe special thanks to Sooin and two kids who made my journey a more meaningful experience.

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CHAPTER 1

INTRODUCTION

One consequence of globalization has been a renewed focus on the importance of regulation in both national and global contexts. It is clear that given competitive pressures, many developing countries lack the ability and/or willingness to enforce labor laws (Baccaro 2001, Elliot and Freeman 2003). The reports of exploitative working conditions – low wages, excessive and involuntary overtime, and health and safety risks – in many developing countries, such as Indonesia, India, the Philippines, Guatemala, and Mexico (McKay 2006, Seidman 2007, Caraway 2007, MakeItFair 2008, 2009, WRC 2009) lend support to the argument that globalization may cause a downward movement in labor standards worldwide.

China, the world's factory, is no exception. Ching Kwan Lee (2007) notes widespread labor abuses in China, including wage nonpayment, disciplinary violence, and industrial injuries (p. 164) and Mary Gallagher (2005) characterizes life in the country's factories as "nasty, brutish, and short" (p. 79), and stresses that, even under a labor contract, nothing is guaranteed, as employers prioritize production processes and their company's financial situation over adherence to law. In response to increasing concern over working conditions in China, the government enacted a series of highly protective labor law in January 2008. The law is designed to end the practice of informal employment and labor abuse, while empowering unions and streamlining the process of dispute and grievance settlement. At the time of its introduction, there was considerable skepticism regarding how well the law will be implemented (Kuruvilla, Gallagher and Lee 2011), given the importance of labor costs to business strategies in China, the restricted capacity of government to enforce the law, and the lack of labor voice in China due to the absence of strong, independent labor.

Against this backdrop, this dissertation explores labor law enforcement and compliance in Chinese workplaces. I highlight an increasing variation in enforcement and compliance, and then explore the determinants of this variation. I argue that current approaches to the study of compliance, such as state-centered approaches focusing on deterrence or compliance (e.g. Becker 1968, Bardach and Kagan 1982, Piore and Schrank 2006) and non-state approaches focusing on the role of NGOs or triggered corporate social responsibility policies (e.g. Locke et al. 2007, Rodriguez-Garavito 2005), do not fully account for the wide variation in compliance and workplace practices that exists in contemporary China. I also argue that China-centered studies, which implicitly draw upon either legal model of compliance (Dong 2008, Chang 2007) or a collective action approach (Chen 2007, Friedman and Lee 2010), tend to overlook the dynamic of “law-in-action” underway in Chinese workplaces.

I propose a new framework of “bottom-up” regulation that incorporates the roles of new actors: 1) workers themselves (specifically, the second-generation workers) and 2) a wide variety of labor-related social intermediaries (specifically, the local media, regional union legal aid centers, university legal clinics, labor NGOs, labor lawyers, “barefoot lawyers”, and HR/labor professionals), who play an increasingly prominent role in the maintenance of labor standards in China. I argue that these actors use a variety of strategies to directly and indirectly increase the costs of non-compliance to employers of either directly violating the law or continuing high legal risk practices. Employers are accordingly motivated to either comply more with labor laws or adopt more sophisticated HR/IR practices to reduce potential legal risks in the workplace. Particularly, I underscore the indirect impact of these intermediaries on the local legal environment; I argue that, supported by a series of pro-labor laws and policies, these labor-related social intermediaries have contributed to fostering a new legal environment that heightens

concerns about the legality of traditional workplace practices and motivates employers to deal with this new environment, either by stricter adherence to labor laws or adoption of more sophisticated employment relations practices.

While my study builds on the regulatory compliance literature (e.g. Becker 1968, Braithwaite and Makkai 1991), I have had to dig deeper to fully explain the current dynamics on the ground. Chinese factory managers (who generally lack legal knowledge and capability) and the Chinese context (which makes it hard for employers to calculate the cost of violations) defy the underlying assumption of the regulatory compliance approach, that is, “a strategic calculation of violation costs in a predictable regulatory environment.” In addition, the current situation in China’s workplace, where newly adopted practices and a certain level of compliance have been maintained despite the economic crisis in 2008, also calls into question the argument presented in the regulation literature, “when enforcement becomes weaker, then compliance becomes weaker too.” Though mostly in agreement with the literature on complaint-based rights protection systems in the US (Edelman et al. 1992, Sutton et al. 1994, Dobbin and Sutton 1998, Hirsh 2009, Kelly 2010), my study differs in two aspects. First, the labor-related social intermediaries in my study, the concept of which is broader than that of HR and labor professionals depicted in US context-based literature, act as a driving force in formalizing personnel strategies and enhancing workplace practices. Second, this bottom-up pressure is, with regional variation, more salient in the Chinese context due to several unique characteristics of the country: a socialist legacy, including a history of bottom-up revolution, and the continued power of previous socialist institutions (e.g. media, trade unions, and various social organizations); the recent implementation of a series of pro-labor policies and laws well known for their streamlined legal process for complaints and high financial rewards for filing (or reporting) workers; and a

repressive authoritarian regime that sends a clear signal that it pays off for workers to individually use the law as their weapons against employer wrongdoing, while harshly punishing collection action. In essence, by highlighting “bottom-up” enforcement in China, I underscore the unexpectedly strong and sustainable effect of individualized legal activism on employers in a country where workers’ collective action rarely has any lasting impact.

My dissertation contributes to the literatures on regulation, labor law enforcement, comparative employment relations and China studies. First, I identify a Chinese phenomenon, bottom-up enforcement of labor laws by diverse stakeholders. My framework of “bottom-up” regulation that incorporates the role of two actors (the second-generation workers and various social intermediaries) can better explain the wide variation in contemporary China’s workplaces. By articulating a model of non-state bottom-up enforcement, I contribute to an important policy debate in global regulation i.e., how to enhance compliance and improve labor standards.

Particularly, the Chinese case can offer a feasible solution to developing countries which suffer from state’s incapacity (e.g., understaffing, undertraining, under-equipment). The second contribution of the dissertation is to provide a more nuanced understanding of understudied non-state bottom-up enforcers: the second-generation workers and social intermediaries. While previous studies tend to overlook how these actors have exerted an increasing influence on employers, my dissertation provides a detailed account of how these actors increasingly engage in labor law enforcement and thereby motivate employers to either move up to standards or revamp their HR/ labor practices. Third, my study of Chinese workplaces enriches the existing literature by presenting a more variegated picture of compliance, in contrast to prior writing that presents a monolithic picture of widespread abuse of labor standards in China. Last but not least, my dissertation breaks down the compliance process on the part of employers, which has largely

remained as black box in regulatory compliance literature. My research provides a more nuanced account of the compliance mechanism by which employers come to be motivated to work towards compliance (for more details, see Chapter 6). By doing so, my findings suggest that the *regulator*-oriented mainstream literatures needs to pay more attention to the *regulated*.

My dissertation consists of four parts, each focusing on a distinct but related aspect of enforcement and compliance in China. The first part of this dissertation (Chapters 1 and 2) begins with an overview of dissertation. Then, it provides literature review regarding the determinants of variation in employer compliance, which is followed by a critical assessment of its relevance to the Chinese context, and sets forth the argument of this dissertation. The second part (Chapter 3) consists of an empirical investigation into labor law compliance in Chinese workplaces. As this dissertation basically takes inductive field investigation approach, the finding of this chapter poses an important question for the next chapters: what causes this variation? Based on extensive field research in one economic development zone in southern China, I present a more nuanced view of compliance. Contrary to the stereotype of absolute non-compliance, my research finds that certain legal provisions are complied with assiduously (thick compliance), while others are observed only superficially (thin compliance), and yet others are blatantly ignored (non-compliance). I demonstrate this variation in compliance with specific legal provisions is the result of interest convergence (or divergence) among relevant actors, namely, traditional actors (local government and employers) and emerging actors (second-generation workers and labor intermediaries). Based on these findings, Chapter 3 proposes a pluralistic, pragmatic approach to labor law compliance in China, and suggests further study about the determinants of this increasing variation in China's workplaces.

In the third part of my dissertation (Chapters 4, 5, and 6), I delve into two emerging actors (the

second-generation workers and labor-related social intermediaries) that I found in chapter 3.

Particularly, I underscore the latest changes in these two actors and examine how these changes contribute to better labor law enforcement and compliance. In Chapter 4, I delve into what labor social intermediaries do in enhancing labor law enforcement and compliance in China. Based on extensive fieldwork including participant observation, numerous factory visits, and numerous interviews (with various social intermediaries, labor officials, managers, and workers) over the past four years, I highlight the variety of methods employed in bottom-up labor law enforcement. Specifically, I identify three mechanisms by which these social intermediaries (specifically, the local media, regional union legal aid centers, university legal clinics, labor NGOs, labor lawyers, “barefoot lawyers”, and HR consultants) engage in enforcement and compliance: 1) strengthening the formal state enforcement, 2) facilitating bottom-up enforcement, and 3) arousing public attention and cultivating local legal environment by directly challenging problematic employers regarding their violations of labor standards.

In chapter 5, I explore a changing workforce in China, particularly the heightened rights consciousness of second-generation workers. I provide a detailed analysis of legal consciousness among these young workers. The findings from 449 surveys of workers and job-seekers indicate that the new generation of workers in China largely has at least a basic understanding of major labor law legal provisions. This result resonates with my field interviews with managers who have recently expressed significant concerns about “reporting threat”, namely, the sharp increase in workers’ reporting employers’ violations to labor inspection bureau. The findings also indicate that the new generation of workers in China is not a homogenous group, but represents differing levels of legal knowledge depending upon individual and contextual factors. Specifically, typical and more basic demographic variables (e.g. gender and education) showed a mixed, less

conclusive link to legal knowledge. However, a deeper look into the socio-demographic backgrounds of these workers, including hometown, work experience, access to the internet, and dispute experience shows these factors to be associated with a higher level of legal knowledge across three major provisions of current Chinese labor law: written labor contracts, social insurance, and overtime premiums.

The fourth part of my dissertation (Chapter 6) empirically tests the effects of these intermediaries on employers' degree of compliance, based on establishment-level surveys in two regions. I also provide a more nuanced account of the compliance mechanism by which employers come to be motivated to work towards compliance, by highlighting employers' increasing use of external solutions from outside HR/labor professionals. My findings demonstrate that employers' use of external feedback partially mediates the relationship between employers' perceived risk caused by strong social intermediaries and the degree of compliance. In my conclusion (Chapter 7), this dissertation ends with conclusion and discussion.

The research question of my dissertation originated from my exploratory field research during the summer of 2008. While conducting open-ended interviews with HR managers, workers, and labor officials in nine economic development zones across China, I noticed wide variation in labor compliance and HR/labor practices across factories and regions. That is, certain factory managers in certain regions expressed heightened concerns about their workplace practices, and certain factories showed more compliance with labor laws. This was surprising to me, given the popular notion of outright labor law violation and the sweatshop image of China's economic development zones, which is depicted in the literature. For six months during 2009 and 2010, in order to explore the determinants of the variation in China's workplaces, I conducted another round of in-depth interviews with related actors, and conducted participant observations at

several labor-related entities (e.g., factory HR departments, assembly lines, labor arbitration committees, law firms, labor NGOs, and university legal clinics). Then I came up with a tentative argument and scenario: *the state agency is not the sole regulator of labor laws, but two new actors (second-generation workers and diverse labor intermediaries) play an increasingly important role in influencing labor law enforcement and compliance. These diverse “bottom-up” pressures contribute to heightening employers’ perceived violation costs, thereby motivating employers to rethink their traditional HR/labor practices and to meet standards.* Building on my preliminary fieldwork results, I collected surveys of workers and factories in the electronics industry in 2011.

My focus is on the factories and workers in the electronics industry, and that of China deserves attention in a couple of aspects. China is currently the world’s largest producer of numerous electronics products (Pecht 2006). Domestically, as a strategic industry of China, electronics continues to play a critical part in China’s economic development. However, despite this remarkable development, most producers still focus on low-end production, such as assembling and testing (MakeItFair 2008, 2009, WEED and SACOM 2008, Pecht 2006). Not surprisingly, it is reported that employers in the electronics (parts) industry routinely violate legal provisions and subject their workers to labor abuses such as unpaid or underpaid wages, excessive overtime, and dangerous workplace environments (Chan 2001, Pun 2005, China Labor Bulletin 2010, BusinessWeek 2006). Recent reports about abuses at Foxconn, a major supplier for Apple, illustrate contract manufacturers’ endless pursuit of lower production costs and its adverse effects on labor (SACOM 2011). Given the current controversy and the importance of electronics industry, it is worth examining labor compliance and workers’ legal consciousness in the electronics industry.

In terms of research design, the focus on workers and employers in a single industry is also a necessary strategy. Numerous studies and investigative reports well illustrate that HR/IR practices and labor law compliances differ industry by industry, due to the differences in terms of products, production style, and workers (FLA, MakeItFair, SOMO, Good Electronics reports).¹ My preliminary field research also confirmed this variation across industries. For instance, garment industry was more notorious for last-minute orders from buyers as well as lower wages, which meant that the plants there were more likely to require excessive overtime work and violate policies for overtime premiums. In addition, I noted that factories in the electronics industry tended to have better working facilities due to the issue of product quality (e.g. the concern about the dust and its potential damage to the product). Therefore, given the importance of the electronics industry, and to assure a systematic comparison by controlling for industry, my research focused exclusively on electronics.

As to my selection of the regions, I initially had nine economic development zones in mind, based on my past three years' field research, and then narrowed them down to four regions. My selection of these four regions reflected three realistic concerns. The first and most important consideration relates to the feasibility of the research, given the fact that China's local governments are quite sensitive to labor studies. This issue has recently become more serious due to the growing labor unrest in China. It should be noted that, when I finally chose the research places in the spring of 2011, it appeared that the situation in the Arab world was influencing the local officials in China. Therefore, as Donald Clarke at the GWU Law School pointed out on a discussion board, "In the current atmosphere, no official wants to be on the receiving end of an angry telephone call from his superior when someone he has failed to control

¹ See reports in www.fairlabor.org, www.makeitfair.org, www.somo.nl, www.goodelectronics.org

causes a stir that in some way embarrasses the leadership.”² Indeed, some of my local contact people (particularly, social intermediaries) were noticeably self-conscious in April and May in 2011, despite the fact that their activities were far from collective actions, and my research topic did not relate to the government’s concern list (e.g. worker strikes and suicides). Accordingly, I had to consider the possibility that local officials could stop my field research at any time. Secondly, it was necessary to control for type of industry (and also the major industry of an economic development zone) for a thorough and systematic analysis. As mentioned earlier, I chose to focus on the electronics industry. These four regions that were finally chosen are all located in the two major hubs of the world’s high-tech electronics industry: the Pearl River Delta (PRD) and the Yangtze River Delta (YRD). Since the 1990s, domestic and foreign electronics factories have moved into the PRD and YRD in order to enhance coordination and reduce logistics costs. Located in the PRD and YRD – the hub of the electronics industry (e.g., laptops, cellphones, notebooks, microwave ovens, and refrigerators) – these four regions house various large, medium, and small-size factories.

The characteristics of my research also influenced my choice of research sites. My research required factory site visits, in-depth interviews with various actors, participant observation of various social intermediaries, and double-checking of factory compliance situation with local stakeholders (labor officials, various societal actors, and workers) in order to minimize the potential problems in my surveys of establishments and workers. A study requiring this kind of “deep” research depends largely on the researcher’s contextual backgrounds and networks. Accordingly, I was motivated to choose the places where I could employ more resources. In sum, given the research purpose and research feasibility, I narrowed the regions down to four, in

² See Chinese law professor blog http://lawprofessors.typepad.com/china_law_prof_blog/page/3/

which I could enjoy more safety and autonomy in my research due to the social networks and experiences that I had accumulated during the previous four years' preliminary field research. Finally, I suggest that collaborative research is necessary, given the difficulty of this kind of compliance study in the Chinese context. Realistically, a study done by one person has clear limitations; it is not easy to choose a large number of regions, controlling for factors other than explanatory variables. Further, face-to-face interviews and site visits, which are desirable to minimize potential problems in this kind of compliance study, depend largely on the researcher's contextual background and networks. In this sense, future research can benefit from collaborative research in which each researcher in charge of a specific region conducts site visits and face-to-face interviews across industries, possibly with the random sampling method, based upon the individual researcher's in-depth contextual background. In this way, future research can expand across the industries and regions for a more systematic analysis and further-reaching generalizations.

CHAPTER 2

LITERATURE REVIEW AND ARGUMENT

This dissertation examines the labor law enforcement and compliance in contemporary China's workplaces. Until very recently, China was notorious for exploitative working conditions including low wages, excessive and forced overtime, and health and safety risks, as in most developing countries (Lee 1999, Chan 2001, Pun 2005). A closer look at China's workplaces, however, reveals broad variation in compliance with labor law across regions and factories, as well as in compliance with different legal provisions. The author's extensive field research over the past four years (as well as a growing number of media coverage and NGO reports) reveals that a monolithic picture of outright violation of labor law is no longer true. Indeed, certain factories in certain regions show higher compliance than others. Certain legal provisions are observed more assiduously, while others are superficially observed or still ignored. This dissertation explores the question: why and how does this increasingly wide variation in compliance exist in contemporary China's workplaces?

There is now a rich literature that explains the determinants of this variation.³ These are state-centered approaches focusing on deterrence or compliance (e.g., Becker 1968, Bardach and Kagan 1982, Piore and Schrank 2006), the corporate-based voluntary monitoring approach (e.g., Locke et al. 2007, Matten and Crane 2005), the NGO-based "naming and shaming" approach (Rodriguez-Garavito 2005, Bullert 2000), the approach of worker empowerment via trade unions (e.g., Freeman and Medoff 1984, Chen 2007), and the constructivist approach in organization studies (e.g., Edelman et al. 1992, Dobbin and Sutton 1998, Hirsch 2009). However, I argue that

³ Related questions are "How to improve working conditions?" "How to achieve effective labor regulation?" "How best to enforce labor standards?", and "How to enhance employer compliance?"

these approaches do not fully account for the wide variation in compliance that exists in today's China. I also argue that they tend to overlook the dynamic of "law-in-action" underway in Chinese workplaces.

Based on an inductive field investigation for a total of 12 months, I propose a "bottom-up" enforcement model, which incorporates the roles of new actors: 1) workers themselves (specifically, second-generation workers) and 2) a wide variety of labor-related social intermediaries including the media, labor lawyers, labor-focused NGOs, and labor professionals, who play an increasingly prominent role in enhancing labor law compliance in China. I argue that these actors use a variety of strategies to directly and indirectly increase the costs of non-compliance to employers of either directly violating the law or continuing high legal risk practices. In essence, the bottom-up regulation model posits that the interaction of these four factors – two traditional actors (employers and local government) and two new actors (second-generation workers and a variety of social intermediaries) – determines the level of employers' compliance with labor law, thereby explaining wide variation that is obscured by existing approaches.

This study deserves close attention for practical and theoretical reasons. Practically speaking, this study relates to ongoing discussion regarding labor regulations, i.e., how to enhance compliance and improve labor standards internationally, and is particularly pertinent to developing countries, which always suffer from a lack of capacity to enforce labor laws (Baccaro 2001, Seidman 2007, Burrow 2012). This study is also important from a theoretical perspective, given the situation that existing explanations that have focused primarily on either a top-down state sanction or non-state approaches (such as CSR approach and NGO approach) are increasingly considered to be questionable (Gunningham et al. 2003, Clapp 2008, FLA 2012).

The remainder of this chapter is organized as follows. First, to draw insights for this study, I review six popular accounts of enforcement and compliance in the literatures on regulations, labor inspection, industrial relations, and organization studies. Then, I examine the relevance of these accounts to the enforcement and compliance in contemporary China. Following a critical assessment of each account, I propose a bottom-up regulation framework in China, which was driven by my inductive field research in China, and offer alternative explanation for wide variation in enforcement and compliance in China's workplaces.

EXISTING APPROACHES TO ENFORCEMENT AND COMPLIANCE

The debate on globalization and labor standards has led to great scholarly and policy inquiry into how to motivate (or force) firms to comply with labor law. Regarding this question, it should be first pointed out that two major changes have occurred in labor law enforcement across the world due to deepening globalization and harsh economic competition. Previously, the business of improving labor conditions rested solely with the state which enacted and enforced all labor laws. However, the state's central status in the discussion of labor rights has been blurred (Seidman 2007). The state's willingness and capacity have been questioned by labor activists and policymakers. Another distinctive change is that diverse actors (or stakeholders) have begun to take part in better labor standards project, partly addressing the issues that the weakening state failed to deal with. In addition to the typical industrial relations actors (the state, trade unions, and employers), new stakeholders such as social justice groups, domestic and international NGOs, international institutes, third-party monitoring firms, and the media have actively engaged in working condition issues (Elliot and Freeman 2003, O'Rourke 2003, Sabel and Dorf 2006).

Reflecting these changes, I develop six accounts of the determinants of employer compliance

drawing upon the literatures on regulations, labor enforcement, industrial relations, and organization studies. These are the deterrence and cooperation approaches in the regulation and labor enforcement literature, the corporate social responsibility (CSR) approach, the NGO-based approach, the worker empowerment approach, and the constructivist approach in organization studies.⁴

Depending on the degree of the role of the state, I group these six accounts into two categories: a state-centered approach and a stateless approach.⁵ Scholars of the former approach argue that the state should be a primary actor in improving working conditions and therefore the focus should be on strengthening labor law and enhancing state capacity (Weil 1996, Piore 2002, 2004, 2007, Schrank 2008a, 2008b). They suggest that, although it requires serious commitment in terms of time, effort, and resources, only a *state-centered* approach is sustainable and empowering for workers.

On the other hand, the stateless approach suggests that the state is not a sole enforcer and that, realistically, various approaches including 1) corporate-based voluntary monitoring, 2) NGOs' naming and shaming, 3) workers' strong, independent grassroots unions, or 4) normative and/or imitative isomorphism pressures under an extremely uncertain environment can enhance the working conditions significantly. Further, depending on "where the focus is", these four stateless approaches can be categorized into two: approaches focusing on the regulator (the NGO-based approach and the worker empowerment approach) and approaches focusing on the regulated (the

⁴ The literature here is by no means an exhaustive list. The approaches chosen here satisfied two criteria: 1) their prominence and 2) their direct relevance to this study.

⁵ It should be noted that some approaches (such as the empowerment approach and the constructivist approach) are not easy to categorize along "state-centered versus stateless" criteria because they contain various aspects. Although I categorize them into stateless approach, I do not mean to say that these approaches do not emphasize the role of the state, but to say that the focus is more on the non-state respects (in case of empowerment approach, independent, strong unions; in case of constructivist approach, the normative, imitative isomorphism pressures among managers and HR professionals).

corporate-based approach and the constructivist approach). Specifically, the NGO-based approach focuses on indirect social intervention against bad working conditions, while the worker empowerment approach focuses on the indirect internal intervention of collective workers against employer violations of labor law. These two approaches share common ground in that the focus still lies in the enforcers (NGOs and trade unions). On the other hand, the corporate-based approach and the constructivist approach focus more on the regulated. These two approaches examine how employers (or the regulated) are motivated or forced to move towards a higher level of compliance. In sum, these six accounts of determinants for compliance can be categorized, depending on the degree of the state's role (state-centered versus state-less) and the focus of attention (regulator-focused versus regulated-focus).⁶

Insert Figures 1 and 2 about here

1. The state-centered policing approach

A first approach, rooted in rational choice perspectives of the law and organizations, pays attention to the state's intervention and its sanctioning impact on violators. This approach draws mainly on deterrence theory in regulatory compliance literature (Becker 1968, Stigler 1971, Polinsky and Shavell 2000). Scholars such as Becker (1968) and Stigler (1970) suggest that the regulated will comply with regulations when the expected punishment associated with non-compliance, namely, objective violation costs, exceeds the costs of compliance. As objective violation costs are determined by the combination of detection probability and punishment severity, the solution for higher compliance would be either heightened inspections or

⁶ These literatures can also be categorized depending on the style of enforcement (policing versus counseling), a categorization which resonates with the deterrence and compliance model in the regulation literature (Reiss 1984, Gunningham 1987, Ayres and Braithwaite 1992). Building on my categorization in my dissertation proposal (the version of February 2011), a typology is provided in Figure 2 as well.

strengthened legal provisions.

Similarly, in labor law enforcement literature, scholars argue for state-oriented strong capacity and severe sanctions (Arthurs 2004, Murray 2003, Esbenshade 2004). They strongly believe that a serious threat of enhanced state inspection and sanctions motivates companies to accept responsibility for improving working conditions. They further emphasize that the stateless methods (e.g., voluntary monitoring or NGO boycotts) are effective instruments only when backed by strong intervention by the state.⁷ Gay Seidman argues in her book *Beyond the Boycott* (2007) that activists should “focus their efforts on shoring up weak states, reinforcing national institutions rather than trying to replace them with even weaker NGOs.” She emphasizes that worker empowerment is possible and sustainable only through reinforcing national industrial relations systems. Proponents of this approach argue that the solution can be accomplished only by pushing each state to enforce their own laws (which already exist) and helping to strengthen formal state capacity for workplace intervention (Murray 2003, Esbenshade 2004). This approach also relates to a legal model of compliance, which has been mainly supported by well-known domestic legal scholars in China (e.g., Dong 2008, Chang 2007). Focusing on the impact of labor law on employer behavior, these scholars have argued either for or against the strengthened labor law.⁸

2. The state-centered counseling approach

A second state-centered approach emphasizes the importance of active state engagement in the workplace, but in more cooperative ways. This counseling approach (also known as the

⁷ This approach also relates to Karl Polanyi, who views the state’s intervention to regulate work as basic common sense, suggesting that “to allow the market mechanism to be the sole director of the fate of human beings and their natural environment would result in the demolition of society.” (1944/2001, p.76)

⁸ Specifically speaking, Dong (2008) argues against new labor law given the possible adversary effects of strengthened law on employers and workers, while Chang (2007) argues for stronger labor legislation for worker protection.

cooperation or persuasion approach) emerged in the 1980s questioning the efficacy of the deterrence model. Scholars argue that stringent deterrence-based sanctions cause bureaucratic inefficiencies and create disincentives for compliance (Bardach and Kagan 1982, Ayres and Braithwaite 1992, Gunningham, Kagan and Thornton 2003). Given this point, these scholars focus on how to induce (or motivate and persuade) the actor to comply with the law, not on how to sanction violating actors. In this cooperative approach, state agents' discretion and a mutual understanding between state agents and employers are critical in finding out workable solutions for compliance or better labor standards.

Similarly, a growing body of studies in labor law enforcement and industrial relations literature emphasizes the importance of active state engagement in the workplace in a consultative, constructive way (Piore 2002, 2004, 2007, Piore and Schrank 2006, Schrank and Piore 2007, Schrank 2008a, 2008b, Teague 2009). These scholars points to a Latin model of labor inspection as an ideal type, and suggest that labor inspectors ideally can act as best practice consultants. The Latin model, which originated primarily in France in the 19th century, was introduced to other southern European countries (particularly, Spain and Portugal) and then migrated to Latin America.⁹ The distinct features of the Latin model are that a single agency enforces the laws “in an integrated and unified way”, and that inspectors, who have considerable discretion, “conduct their work with a more coordinated and holistic approach.” This approach is similar to the state-policing type in that it stresses the role of state, but it diverges due to its focus on persuasion and education. Proponents of the Latin model believe that most labor violations stem from ignorance or limitations in the ability to address them. Accordingly, capable and experienced inspectors

⁹ Given its origin, the Latin model shares many features with the Franco-Iberian model (Reid 1986, Von Richthofen 2002). In the dissertation, I call this approach a Latin model because it is considered more relevant to the context of developing countries.

work largely as advisors and consultants by getting involved in upgrading production facilities or HR practices (Piore 2007).

3. The state-less corporate-based approach

A third approach highlights private firms' efforts to enhance working conditions. Given the weakness or absence of state enforcement, corporate-based voluntary enforcement has emerged as a major approach. Proponents of this approach argue that this approach can provide alternative solutions to the question of "how to improve labor standards." They argue that the corporate-based approach is realistically more viable and more efficient in the current weak enforcement situation, particularly in developing countries (Ruggie 2003, Santoro 2009, Scherer and Palazzo 2007, Matten and Crane 2005, Scherer et al. 2006, Jenkins 2001). For the past decades, many multinational corporations have created self-regulatory systems to deal with bad working conditions in their supplier factories as the state agencies did in the past (Amengual 2010). In the face of increasing external pressures (e.g., The Nike case), they set codes of conduct and force their supplier factories to follow the rule. These major brands enforce this rule by themselves, employ third-party monitors (via certificates and/ or reporting), or conduct joint auditing (O'Rourke 2003, 2006). If a supplier factory does not live up to this rule (or codes of conduct), this factory will receive diverse sanctions (e.g., from a simple warning to revocation of contract). The core argument of this approach is that well-designed and implemented private regulations could effectively push supplier factories towards compliance.

On the other hand, recently, a growing body of studies proposed a *commitment-based* CSR approach, distinguishing itself from a typical punitive CSR approach (Locke et al. 2007, Locke et al. 2009, also see Frenkel and Scott 2002). These scholars suggest that it is time to expand beyond simple state inspection and third-party auditing toward a system of improvement that

addresses the question of “why not improve” in developing countries. They argue that the typical, punitive way of detection and sanction by labor agencies of developing countries and MNCs (or third-party monitors) are problematic. They point out that this kind of sanction, be it state policing or third-party monitoring, may only lead to a “cat-and-mouse game” (Locke et al. 2009, Businessweek 2006), thereby not being able to act as major forces for better labor standards. Alternatively, in a series of studies on supply chains of major brands, Locke and his colleagues find that only a commitment-based approach, which is based on trust and mutual interests, can make a real difference in working conditions. These studies commonly highlight the role of auditors as innovation agents, as well as a win-win relationship with suppliers in their pursuit of better labor standards. Locke et al. (2009) sees auditors as “a conduit of information” and “agents of innovation”. These auditors facilitate communication and reduce barriers between functions in the firm and, thereby, help many companies with limited resources upgrade their systems.¹⁰ In sum, Richard Locke and his colleagues convincingly suggest that private monitoring should not remain at simple monitoring activities, but needs to be integrated into overall factory production systems (e.g., management processes, quality improvement, human resource management and the like).

4. The NGO-based approach

The NGO-based “naming and shaming” approach tends to not trust the capability and

¹⁰ Locke et al. (2007) identifies two kinds of relationships between a brand and their suppliers: a “hands-on, cooperative” relationship and an “arms-length, more distrustful” compliance relationship. Locke et al. (2007) indicates that more frequent visits and more open communication between Nike’s regional staff and Plant A management led to “trust and a better working relationship between these two actors.” In turn, this positive relationship contributed to upgrading production system and working conditions in Plant A. Conversely, less frequent, more formal communication patterns between these actors appear to have reinforced typical buyer-supplier relationship, namely, the “arms-length nature” of their relationship, in which Plant B pursue economic motivations and Nike seeks to sanction violations, as seen in a typical, punitive monitoring relationship.

willingness of both the state and private companies to enhance labor standards. In a situation where labor laws and codes of conducts are seldom enforced and employer violations are rarely sanctioned, this approach argues, stateless policing strategies such as naming and shaming can offer an effective alternative form of sanction on irresponsible major brands and abusive employers (Keck and Sikkink 1998, Armbruster-Sandoval 2003, Esbenshade 2004, Soule 2009). Scott Nova, the president of the Workers' Rights Consortium (WRC), states that, despite a recent emphasis on corporate social responsibility (CSR), private companies still lack a willingness to improve labor standards.¹¹ Instead, many transnational campaigns have been noticeably effective in publicizing labor abuses in the supplier factories of major brand companies. This moral shaming has effectively forced major brands to be more accountable for improving working conditions at their suppliers' facilities.

The recent Foxconn case is a good illustration of the stateless policing approach. Initially, Apple and Foxconn were indifferent to bad working conditions there. However, more and more activists (such as Hong Kong-based SACOM and European SOMO) and journalists began to take the issue public and these two companies came to be viewed as a bad guy operating sweatshop factories. This eventually led to Apple's active involvement in improving its suppliers' working conditions by concluding a contract with Fair Labor Association (FLA) and by revamping its auditing processes.¹² This Foxconn case is almost identical to the Nike case in the late 1990s, when Nike came to take its suppliers' working conditions seriously in the face of NGOs' naming and shaming. Another similar case is that of Kukdong in Mexico (Rodriguez-

¹¹ At the seminar "Improving Labor Standards in Global Supply Chains: Codes of Conduct, Monitoring, and Beyond", Global Economy Center of University of Wisconsin, November 2009.

¹² For more details, see the investigation reports at FLA homepage (www.fairlabor.org) and a newspaper article (Duhigg, Charles and David Barboza. 2012. In China, the Human Costs That Are Built Into an iPad. *NY Times*, January 26, 2012).

Garavito 2005). Acute pressure by transnational activists at the initial stages of abuses there played a critical role in bringing diverse stakeholders to the table and determining the outcome of mobilizations to improve working conditions.

In most cases of naming and shaming, local actors pass on reports of labor abuses to transnational activists and then they use that information to mobilize average consumers to put pressure on violators (Keck and Sikkink 1998). By publicizing the issue across the globe, these activists challenge the well-established brand image of major companies and convince consumers to boycott their products (Bullert 2000, Featherstone and USAS 2002). In general, transnational activism campaigns mainly focus on mobilizing consumer pressure against the target company by directly naming and shaming the target, rather than by passively asking the developing country to address violations. In recent years, Workers' Rights Consortium (WRC) has stood out in this kind of naming and shaming.¹³ These days, NGOs' clever use of information technology has made active sharing of sweatshop abuse reports possible in developing countries across the globe. Accordingly, major brands are forced to pay vital attention to enhancing labor standards in their supplier companies (Felder and Meisenbach 2007). While some critics downplay the effect of boycott activism pointing out that it lacks sustainability and impact, it should be admitted that direct consumer activism has been a critical factor in forcing major brands to take the labor standards issue more seriously and start implementing fundamental changes.

5. The worker empowerment approach

A fifth approach highlights workers' collective action and rights, mainly through workers'

¹³ WRC, CCC (Clean Cloth Campaign), SOMO, and SACOM are very active these days. Financially speaking, WRC has a fairly independent structure since this organization is funded by its university members, which is in contrast to most NGOs relying on the financial support of customer companies that these NGOs monitor (Seidman 2007).

independent labor unions. In this approach, workers and the union are central to better labor standards. Proponents of this approach argue that a grassroots union is an effective force for securing compliance in that workers' strong, independent unions enable workers to negotiate with management about their employment and working conditions, as well as to seek redress for grievances (Freeman and Medoff 1984, Marshall 1992, Chen 2007, Friedman and Lee 2010). Because workers are considered to be more interested in having labor laws enforced than employers are, workers' voices and influence via their strong, independent grassroots unions can monitor and check employer violations (Friedman and Lee 2010). In principle, grassroots unions can express their members' interests regarding HR/ labor policies and labor law compliance. For example, when facing excessive overtime, grassroots unions can ask management to lower the OT hours. Alternatively, union representatives may report employer violations to labor inspection agencies or file cases with arbitration committees or courts, seeking redress for their members' grievances. Likewise, Gay Seidman (2007) suggests that an ideal type in the state-centered approach also assumes a strong independent collective voice channel via labor unions.¹⁴ Historically, workers' collective actions via strong trade unions have influenced not only working conditions in individual workplaces, but also welfare policies on a broader level (Koo 2001, Esping-Anderson 1990).¹⁵ Under this rationale, scholars of this approach tend to be skeptical about the effectiveness of *individual* legal rights in the absence of *collective* rights, since "*individualized* legal rights cannot address the fundamental imbalance" of power between worker and employer (Friedman and Eli 2010). In sum, this approach argues that a strong,

¹⁴ However, it should be noted that union effects are weak and inconsistent in the US context (Edelman 1990, Edelman 1992, Sutton et al. 1994, Sutton and Dobbin 1996). Studies indicate that union effects are little in terms of adoption of maternity leave or special affirmative action training and recruitment programs (Edelman and Petterson 1999, Kelly and Dobbin 1999).

¹⁵ Schmitter (1974) emphasizes that labor market institutions such as trade unions can play a significant role in enhancing economic outcomes.

independent grassroots union contributes to better working conditions.

6. The constructivist approach

From a slightly different standpoint, the constructivist approach in organization studies has paid attention to firms' behavior in uncertain environments (Edelman et al. 1992, Dobbin and Sutton 1998, Hirsch 2009, Kelly 2010). These scholars argue that managers and professionals contribute to shaping the meaning of compliance when external environments are quite uncertain and hostile, thereby leading to more attentiveness by employers to external pressures. The core of this approach is a firm's inherent search for a solution in response to its anxiety over external uncertainty (Dobbin and Sutton 1998). That is, employers do not have few clues about "what is exactly required of them" under an "ambiguous, arbitrary, and rapidly changing legal environment", and thus search for the expertise of internal and external experts (or professionals). Under this situation, the professionals act as "an important source of normative isomorphism" (DiMaggio and Powell 1983, Jacoby 1985, Baron et al. 1986). The studies about the role of professionals in workplace practices have documented the prominent role played by labor/HR professionals in constructing models of compliance with legal mandates (Selznick 1969, Westin and Feliu 1988, Reuter 1988, Edelman et al. 1992). Baron et al. (1986) emphasized the role of the personnel profession as a "key actor" in diffusing workplace practices. Edelman et al. (1992) shows that professions play an important part in diffusing practices, and suggest that professionals' interpretation of the environment is an important predictor for employer response to external environmental pressures. That is, this approach offers a more nuanced understanding of regulation process by suggesting that the regulatory process is the outcome of dynamic interaction of the regulator, the regulated, and intermediaries (or professionals). Therefore, this approach suggests that more attention be paid to the mechanisms by which employers come to be

motivated to work towards compliance, contrary to the other approaches which do not pay much attention to the regulated (or company).

RELEVANCE OF EXISTING APPROACHES

1. Two state-centered approaches

Although the two state-centered approaches appear convincing, they do not provide sufficient explanation for wide variation in compliance across factories and across regions in China. I offer critiques from two respects: their irrelevance to the Chinese context and their weakness in general.

1) The state-centered policing approach

This approach is questionable in the Chinese context, because the Chinese context defies the underlying assumption of the deterrence approach. Basically, this approach assumes two elements: “a strategic calculation of objective violation costs” and “a predictable regulatory environment.” However, China has essentially a complaint-driven employment rights protection system. Top-down preventive inspection, which the deterrence approach assumes, is very rare, and local labor bureaus (specifically, inspectors) rely exclusively on workers to identify violators and report them to relevant agencies. Thus, the reality is that only when a complaint is received, do labor inspectors go to the site and inspect it. Therefore, although largely providing some basis for explanation, a top-down deterrence-based approach cannot fully account for wide variation across factories and regions regarding labor law compliance.

In addition, in regulatory compliance literature, it is pointed out that the deterrence approach tends to overestimate the role of law and enforcement in enhancing compliance, and conversely, to underestimate the role of other factors such as firm incompetence and ignorance (Bardach and Kagan 1982, Gunningham et al. 2003, Kagan and Scholz 1984). Empirical studies question the

deterrence impact and the compliance-sanctioning relationship (Gray and Scholz 1981, Braithwaite and Makkai 1991).

2) The state-centered counseling approach

At its most basic, the state-centered counseling approach is far ahead of the current situation across the board in China, and is insufficient in explaining the wide variation in compliance across factories and regions. This counseling model including the Latin model appears to assume two elements: 1) inspectors' reasonable discretion and 2) a certain level of a state's inspection capacity. Under such ideal conditions, inspectors are supposed to make a reasonable decision after consideration of the overall workplace situation together with discussion with the employer. In addition, the state's inspection mechanism must be strong enough to deter purposeful defectors and to protect cooperators against demoralizing and injurious competition from defectors. The reality is, however, that in China over 70 percent of labor officials' time is devoted to labor administration tasks. Therefore, it is almost impossible for local labor officials to pursue a counselor's role, and their job remains that of addressing workers' complaints. In a similar rationale, critics have pointed out that the close relationship between the regulator and the regulated could lead to unsatisfactory enforcement (May and Winter 1999). Particularly, in developing countries, the compliance model could become problematic due to insufficient cultural and bureaucratic infrastructure manifested in prevailing corruption. Many studies about enforcement in such countries point to corruption as a primary factor constraining enforcement effectiveness (Opposa 1998, McCarthy and Zen 2007). Kolben (2011, p.25) points out that most studies investigate and discuss regulatory phenomena that take place in developed countries. Thus, these studies are not well applicable to developing countries in which an issue at hand is not one of over-jurisdiction, but rather one of failure of strict adherence to the law, and of under-

developed regulatory regimes.

Overall, these two state-centered approaches cannot sufficiently explain the compliance variation across factories and regions at the present. If one follows these two models, one cannot get a clue about determinants for variation because the current Chinese situation is far different from the picture depicted in these approaches. Therefore, these approaches are likely to remain as an ideal type for the time being. Another reservation to point out is that these approaches implicitly consider enforcement and compliance to be the function of the regulator. We do not know much about the internal mechanisms of the regulated. In this respect, the regulated need to be brought into the picture in the framework of enforcement and compliance.

2. Four stateless approaches

1) The corporate-based voluntary approach

Although it sounds convincing, CSR-based supplier monitoring only covers a very small number of supplier factories. This is so because MNCs tend to monitor only their 1st tier contract factories. In the sampled factories in this dissertation, less than five percent of all factories received MNC monitoring. Furthermore, the monitoring still remains ceremonial in that the auditors stay only three to four hours in a factory, and that the monitoring activities center on visible issues such as child labor or wage arrears. It is also of note that Richard Locke's (2009) commitment-based monitoring approach is still at a very exploratory stage, conducted by a couple of attentive MNCs.

In addition, although appearing to be a feasible solution, there has been considerable debate regarding this private governance system among academic scholars, practitioners, and activists (e.g., Esbenschade 2004, Manic 2004, Bandy and Bickham Mendez 2003, Bickham Mendez 2005, Frundt 2005, Businessweek 2006). The essence of the criticism is that this approach cannot deal

with the inherent weaknesses of private governance system; private codes are considered to be not clear as to critical provisions, such as freedom of association (Anner 2008). In addition, private auditors are weak in detecting and addressing a variety of complicated workplace issues, while they are good at addressing simple and visible issues (Manic 2004, Barrientos and Smith 2006). Even when auditors do detect these sensitive matters, they rarely care about them due to harsh market competition among third party monitoring firms (Anner 2008, Seidman 2007). The recent article about Apple's supplier monitoring in China in *The New York Times* well illustrates the structural limitations of corporate-initiated compliance efforts.¹⁶

2) The worker empowerment approach

In principle, workers' collective action through a strong workplace union can prevent and/or correct employer violations. However, the workplace union in China, the only official union, is far distant from the ideal labor union which defends workers' rights and interests on the shop-floor; most importantly, the union is unwilling to strike in China. And, despite a few intriguing experiments, the union is for the most part not democratically elected. To mention some specifics, most firm-level unions are dominated by management (Metcalf and Li 2005, Cooney 2007a, 2007b). Likewise, the local union federation is controlled by local governments (Chen 2004). In addition, from a demographic standpoint, most of the worst workplaces – usually small labor-intensive factories – do not have unions, and thus labor union cannot engage in correcting the harsh working conditions.¹⁷ Further, the legal authority and powers given to a grassroots union to push an employer to comply with the law are weak. When a union identifies a violation of the law, it has no direct authority against the employer (Howell 2008). In sum, although the

¹⁶ Duhigg, Charles and David Barboza. 2012. In China, the Human Costs That Are Built Into an iPad. *NY Times*, January 26, 2012

¹⁷ There is a huge gap between the official unionization rate and the reality. The author noticed that a large proportion of grassroots unions are either nominal or very weak.

union in China is gaining power, this factor is still too weak to cause wide variation across factories and regions.

The remaining two approaches (NGO-based approach and constructivist approach) share several elements with emerging bottom-up regulation model in China, although the Chinese model diverges from them in many ways as well. The details about similarities and differences will be addressed in this chapter's latter part where the Chinese model is articulated. In sum, existing approaches do not fully account for the wide variation in compliance that exist in today's China and in many respects do not fit the Chinese context well.

AN EMERGING “BOTTOM-UP” ENFORCEMENT MODEL IN CHINA

With these distinct differences in mind, I suggest that attention should be paid to some indigenous elements that either directly make labor law work or work towards enhancing law enforcement. Following the suggestions of Tsui (2007) to “take the context seriously” and Schrank (2007) that “each country has rich experience of its own on which to draw,” this dissertation extends attention towards an emerging mechanism on the ground in China's workplace that can explain the wide variation in compliance across regions and factories. Based on inductive field investigation for a total of twelve months, I propose a new framework of “bottom-up” regulation that incorporates the role of two actors: workers themselves (specifically a new generation of migrant workers) and a variety of labor-related social intermediaries (specifically, the local media, regional union legal aid centers, university legal clinics, labor NGOs, labor lawyers, barefoot lawyers, and labor professionals) who play an increasingly prominent role in the regulation of labor standards in China.¹⁸ These actors use a variety of strategies to increase the costs that employers face when violating the laws. I argue that these

¹⁸ I detail various labor-related social intermediaries in Chapter 4.

actors increase employer concerns and uncertainty (particularly, regarding the probability of being detected) directly and indirectly, thereby motivating employers to respond to potential risk in the workplace either by more compliance with labor laws or by adoption of more sophisticated employment relations practices. Given that an emerging Chinese model deserves close attention, I first detail four distinct features of this bottom-up enforcement. Then, I articulate its theoretical implications in comparison with three approaches (state-centered policing approach, NGO-based approach, and constructivist approach) in the below.

Insert Figures 3 about here

Four distinct characteristics of emerging “bottom-up” enforcement

1. Within the state’s guidelines

First and foremost, workers and social intermediaries faithfully rely on the state-designed legal framework. They have a clear understanding of what is possible and impossible under China’s strong authoritarian regime. They always behave following prevailing rules and employ the regime’s propaganda and rhetoric to make their actions justifiable (Lee 2008). In a rightful and clever way, workers and social intermediaries expose the gap between labor law and employer practices, and make their grievances addressed. Social intermediaries are more conscious about not violating the state policies, emphasizing that they supplement the state’s function. They make sure that their assistance contributes to workplace stability by caring ever marginalized workers and aggrieved workers and rechanneling their angers into more proper (or acceptable) action.¹⁹

2. Contentious to the enterprise

¹⁹ This strategy resonates with the concept of rightful resistance identified by O’Brien and Li (2006). During field research in China, I could identify that, with regard to a few subjects (e.g. food safety, environmental protection, employers’ labor abuse, and rural officials’ corruption), the state tends to strongly encourage *rightful resistance* on the condition that the actors follow the state’s guidelines.

Workers and social intermediaries openly and loudly challenge employers, appealing to all relevant sympathetic actors and employing pro-worker policies and legal provisions. They are keenly aware that unlawful employer behavior is one of the few issues that they can tackle without being hurt. Armed with state slogans such as ‘harmonious society’, workers and social intermediaries actively expose employer wrongdoings to the public and to the official procedures. Social intermediaries are very good at publicizing violations committed by large employers and then publicizing names and numbers. When employers violate the core reform issues of the central government, such as having written labor contracts, social intermediaries are more than willing to name and shame. This exposure is especially effective when it comes to a well-known or foreign employer, because it attracts attention and satisfies the central government’s expectation that local social organizations are doing their job to expose local corruption and injustice (Lorentzen 2008).

3. Widely supported by the public

A bottom-up legal activism receives wide support from the public and the central government. Given the shared minimum moral values originating from the still latent communist legacy and deepening inequalities within the new society, workers’ rightful resistance receives broad support. This sentiment prevails partly because most Chinese remember the pre-1979 economic reform period in which most workers were treated fairly equally and guaranteed basic economic security. Most informants I spoke with in China expressed deep-rooted sympathy toward migrant workers and their fight for subsistence. Common responses included, “*Migrant workers are human beings like us...we should treat them well...That is the way we live*”, “*They are my sons and daughters*”, “*China was an egalitarian country. Look at the life of migrant workers. It is our responsibility to take care of them.*” I notice a consensus or moral criterion among people that,

regardless of employer circumstances, certain requirements must be satisfied, and that, if not, workers' rebellion is justified. The recent strikes in southern China provide a good illustration of how sympathetic and supportive the public and the central government are to workers' resistance. Commenting on recent continuous strikes, Prime Minister Wen Jiabao stated that he sympathized with striking workers, stressing that employers must improve the working conditions of migrant workers.

4. Consequential to employers

Last but not least, workers' actions to ensure their labor rights have had a consequential impact on employers. Almost all HR managers interviewed expressed serious concerns about possible risks of workers' bottom-up activism. Accordingly, in order to keep legal risks in check, employers have adopted new response patterns by either quickly bringing current labor practices up to standard or employing expedient "risk-aversion" strategies, such as getting signatures for overtime hours and purchasing commercial insurance for formerly uncovered workers. I emphasize that this heightened impact is due to the coincident and overlapping interest of the state, social intermediaries and workers to get workplace problems under control. I also find that, in the face of these intensified pressures, employers are motivated to change some risky workplace practices in order to reduce uncertainty. Large companies tend to care more about their societal reputation. The KFC case in 2006 was a good example; in the face of strong criticism from NGOs and media, KFC China was forced to change its dispatch labor policy and practices to restore its reputation, although the practice of KFC China was not in violation of relevant law, technically speaking. Meanwhile, small and mid-size companies are more concerned about workers' copycat legal reporting and filing as inevitably happens when words spread about a co-worker's financial return from a grievance action. This kind of case occurs

mostly in labor intensive factories in China's export zones. In one such zone, news that workers would very likely win a case against their employer for payment of social insurance or overtime premiums quickly spread from one factory to others. The result was an exploding number of grievance reports and cases filed through official mechanisms. It is clear that the enactment of the new labor laws and regulations on labor inspection has given these workers a very clear understanding of a few sensitive provisions. As workers' basic understanding of what is right and wrong becomes clear, local inspection officials tend to respond more appropriately when a complaint is filed.

These distinctive features of the emerging Chinese model are surprising, given that existing studies have overlooked or minimized the impact of bottom-up enforcement on employment practices. Most studies have suggested that labor abuses will continue in China in the absence of forced labor inspections and collective bargaining by independent workplace unions. The recent Chinese case clearly indicates that bottom-up enforcement matters to employers – a fact that sets it apart from other developing countries. It further suggests that, with a restricted labor inspection resource, a developing country can enhance working conditions to some extent, by strongly supporting and following through on legal activities undertaken by their workers and social intermediaries.²⁰

THEORETICAL IMPLICATIONS

Basically, I view enforcement and compliance as inherently multifaceted. This bottom-up enforcement model has many unique features that defy easy categorization but contain unique

²⁰ Is this legal activism new to China? Although some journalistic reports suggested that this labor-rights revolution is a new situation (Roberts 2005), it has been suggested that this activism has a long history in China (Perry 2001, 2007, 2008a, 2008b, 2009). Perry emphasized that today legal activism is similar to a 'rules consciousness' where protesters frame their grievances in official terms in order to get a favorable outcome in a safe way.

virtues. It shares some elements of existing approaches (deterrence approach, NGO-based approach, and constructivist approach), but diverges from them in several respects, reflecting China's unique context. In brief, while building on the state-centered deterrence approach, it diverges from it in that the source of enforcement is the indirect intervention of two new actors (workers and societal actors), beyond the state's direct intervention. While sharing common ground with the NGO-based "naming and shaming" approach, it differs in that not only NGOs but also various actors (e.g., HR/ labor professionals) engage in enforcement and compliance. While sharing commonalities with the constructivist approach, it differs from it in that not only normative pressures but also coercive pressures exist, unlike the primary focus of the constructivist approach on normative pressures. Below I detail how the emerging Chinese model is similar and different from each approach.

1. The deterrence approach (state-centered policing approach)

The bottom-up model builds on the deterrence theory in the regulatory compliance literature (e.g., Becker 1968, Stigler 1971, Braithwaite and Makkai 1991) in that employers are motivated (or forced) to comply with labor law due to the heightened risk and uncertainty that they perceive. However, this bottom-up model diverges from deterrence theory in that the source of enforcement is the indirect intervention of workers and other societal actors, not the direct top-down intervention of the state agencies. Ideally, the state-centered deterrence approach engages in the workplace directly, by proactively detecting and sanctioning violations in a punitive way (e.g., Becker 1968, Stigler 1971). However, direct, proactive state intervention is rarely seen in China, and the state governs the workplace in an indirect way at arm's length, by setting a floor for indirect intervention of workers and societal actors and encouraging their activities. In sum, although pure deterrence theory cannot be applicable to the Chinese context, the bottom-up

model shares an element of deterrence theory in that the heightened risk and uncertainty that employers perceive are the main predictors for employers' compliance decisions, and that these factors interact with employer circumstances (that is, organization characteristics) and produce wide variation across factories.

2. The NGO-based “naming and shaming” approach

Basically, the bottom-up enforcement model shares common ground with the NGO-based approach in that one of the major sources of enforcement is societal actors. In the bottom-up model, second-generation workers and various social intermediaries involve themselves in a wide range of “naming and shaming” activities in China. In turn, employers feel their concerns and uncertainty increasing. However, existing NGO-based studies are not sufficient to provide a nuanced understanding of the dynamics currently underway in China's bottom-up regulation model. First, in China's bottom-up model, the concept of these actors is broader than that of the NGO-based approach; the intermediaries in China's bottom-up model include not only various NGOs, but also diverse HR/labor professionals (e.g., trade union cadres, labor lawyers, HR managers, and legal clinics). Second, social intermediaries engage in labor law enforcement and compliance in various ways, not limited to naming and shaming (for details, see Chapter 4). By “in various ways,” I mean that these intermediaries complement the state enforcement function, facilitate workers' bottom-up legal activism, and/or create a local legal culture towards more compliance. These intermediaries not only directly challenge problematic employers but also shape employer understanding and perception of local labor standards.

Third, NGO activities in China (particularly, those of labor NGOs) are selective. These actors challenge employer wrongdoings openly and loudly as the state strongly encourages them to do so, while they dare not involve themselves in any collective action and/or independent union

issues at all.²¹ This situation is in contrast to that of the NGO-based approach depicted in the literature, in which NGOs have often helped workers build independent unions in developing countries such as Guatemala and Bangladesh (Brooks 2000, Armbruster-Sandoval 2003, Rodriguez-Garavito 2005). In addition, the institutional configuration in which NGOs engage in workplace issues also differs. In countries like Bangladesh, NGOs' active involvement in child labor issues contributed to new regulations regarding child labor (Brooks 2000). However, China has had pro-labor laws and regulations and the issue is lack of enforcement rather than lack of relevant regulations. Accordingly, NGOs' activities center on exposing the gap between the law and reality rather than calling for new regulations. In sum, the existing NGO-based approach is insufficient to address various aspects of the emerging bottom-up regulation model in China, although sharing some commonalities.

3. The constructivist approach

The two aforementioned approaches tend to focus on the regulator rather than the regulated, thereby providing a weak account of employers. In this sense, the constructivist approach, which addresses "how firms respond to the external environment," can provide a more nuanced understanding of employer behavior regarding legal compliance, and thus can complement the regulator-oriented mainstream literature. In this sense, my study resonates with the literature on complaint-based rights protection systems in the US (Edelman et al. 1992, Sutton et al. 1994, Dobbin and Sutton 1998, Hirsh 2009, Kelly 2010). In the US legal context, characterized by

²¹ This is due to the sensitivity of labor issues under the country's repressive authoritarian regime. The Chinese government has the power to control international and domestic NGO activities, and thus their activities in China are far more circumscribed and remain within state guidelines (e.g., CLNT 2007, Lee and Shen 2011).

Also see several Chinese newspaper articles translated by China Labor News Translations (CLNT); Labor NGOs in Guangdong Province (2008), Dagongzhe Migrant Workers' Centre fights on despite violent attack (2009), Chinese Labor NGOs and Free Legal Services Always in a Precarious Situation (2010).

“ambiguity, complexity and uncertainty” (Dobbin and Sutton 1998), employers have few clues about what an acceptable level of compliance is in an unpredictable legal environment, and thus seek the advice of internal and external HR professionals about acceptable compliance (Jacoby 1985, Baron et al. 1986, Edelman et al. 1992, Sutton et al. 1994). Meanwhile, the meanings of compliance is constructed, diffused, and imitated among relevant stakeholders, and finally influence employers’ HR/labor practices. This approach fits the recent Chinese legal context well and is quite useful in understanding the internal mechanism of employers’ compliance behavior. My fieldwork provides a detailed account of how employers interact with HR/labor professionals in seeking an indication as to what constitutes an acceptable level of compliance in an unpredictable environment (for details, see Chapters 4 and 6).

Although sharing several aspects of the constructivist approach, China’s emerging bottom-up model differs in three ways. First, in the China’s bottom-up model, the concept of *labor-related social intermediaries* is much broader than that of HR and labor professionals in the US context. These labor-related social intermediaries act as a driving force in formalizing personnel strategies and enhancing HR/labor practices in China’s workplaces. Second, this bottom-up pressure is, with regional variation, more salient in the Chinese context due to several unique characteristics of the country: *a socialist legacy*, including a history of bottom-up revolution, and the continued power of previous socialist institutions (e.g. state-controlled media and trade unions); *the recent implementation of a series of pro-labor policies and laws* well known for their streamlined legal process for complaints and high financial rewards for filing workers; and *a repressive authoritarian regime* that sends a clear signal that it pays off for workers to individually use the law as their weapon against employer wrongdoing, while harshly punishing collection action.

Third and more important, the implicit focus of the constructivist approach on normative pressures is too narrow to explain the multi-dimensional aspects (coercive, normative, and imitative) of the antecedents of employers' compliance in the "bottom-up" regulation model. The constructivist approach tends to mainly address the unexpectedly strong influence of non-coercive pressures rather than coercive pressures on organizations. Accordingly, a large proportion of constructivist studies start with such phrases as "In the absence of strong regulatory pressures." In contrast, what should be noted in China's bottom-up model is that the topics addressed are all related to legal provisions (e.g. written labor contract requirements, social insurance purchases, and OT hour regulations). These regulations were first made during the socialist period but had been ignored under the name of economic development. As recent social inequalities and labor unrest have become more serious, these labor regulations have been revived. These days, local governments, which must pursue both worker protection and employer protection, have adopted a "bottom-up" enforcement approach in which, although local agencies do not proactively enforce the law, the agents investigate the problematic employers when a complaint is filed. In other words, the subject of China's bottom-up model is more like coercive pressures originating from labor regulation, thereby easily increasing employer concerns.

SUMMARY

In essence, the emerging Chinese model brings two previously-absent actors to the fore in carrying out enforcement and compliance: second-generation workers and labor-related social intermediaries. These new actors greatly increase the risk and uncertainty that employers perceive. However, these actors do not always increase employers' perceived risk in a *coercive* way; a variety of ascending labor-related professionals (e.g. labor lawyers, HR managers, labor

professionals such as local union cadres, and local journalists) contribute to creating a local-level legal culture and shaping employer understanding and perception of labor standards in a *normative* way (for details, see Ch. 4). In addition to these two new actors, various organizational characteristics influence the risk and uncertainty that employers perceive (see Ch. 6). For an example, larger factories and/ or foreign-owned factories tend to feel more concerns about this new labor environment in China. Although the focus of the dissertation is on bottom-up enforcement and thus it is not addressed closely here, the capacity and attitude of local governments matter as well (Hurst 2009). That said, I argue that these four factors (employers, local governments, and second-generation workers, and various social intermediaries) and their interaction determine the level of enforcement and compliance in China's workplaces, and explain the wide variation in employer compliance and adoption of HR/labor practices. Figure 4 and Table 1 detail the determinants of variation in employer compliance and HR/ labor practices.

Insert Figure 4 and Table 1 about here

At its most basic, the emerging Chinese model can be characterized by 1) unexpectedly heightened pressure on employers regarding labor standards 2) caused by strong non-state bottom-up forces 3) in an quite uncertain legal environment in which social legacies still prevail and an authoritarian regime relies on legal populism, given the increasing labor unrest. By employing this bottom-up regulation framework, this dissertation seeks to explain the wide variation in contemporary China's workplaces. The specific determinants of each actor will be detailed in Chapter 4 (regarding labor social intermediaries), Chapter 5 (regarding second-generation workers), and Chapter 6 (regarding employers and intermediaries).

APPENDIX

Figure 1: Categorization of Relevant Literatures

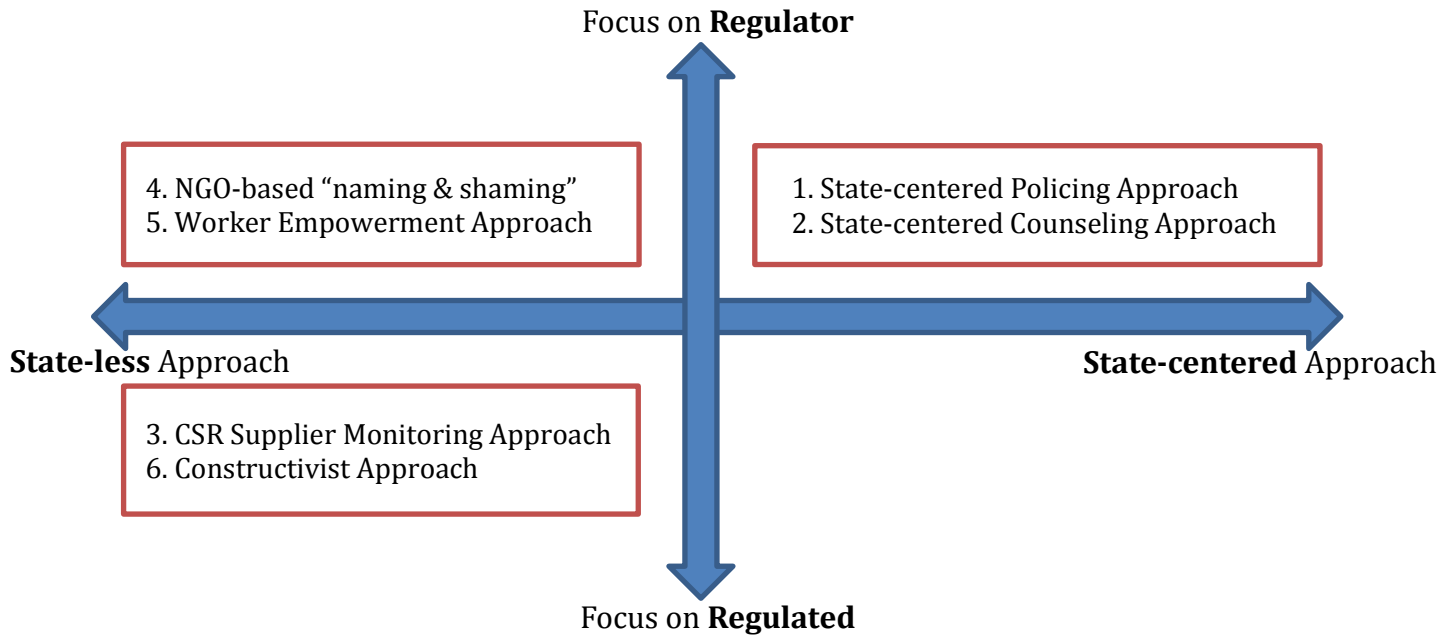


Figure 2: Categorization of Relevant Literatures (upon enforcement style and the role of state)

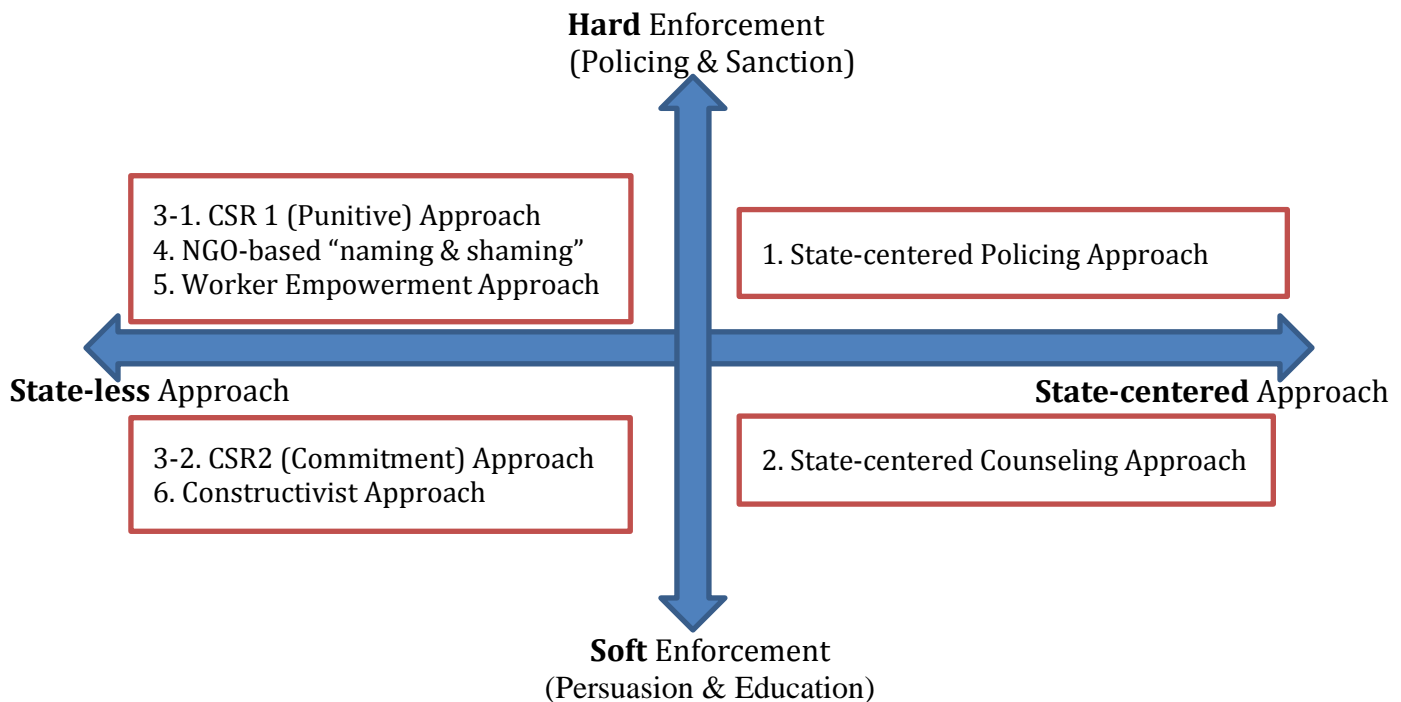
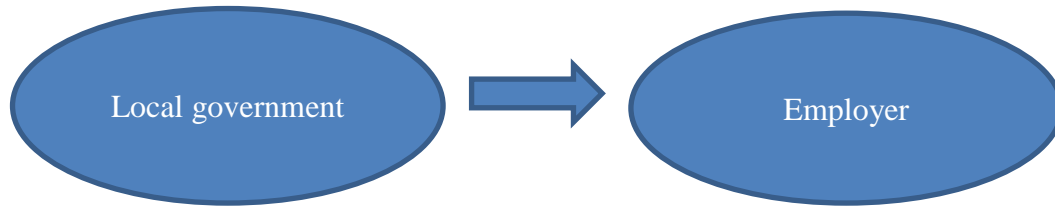


Figure 3: From a dyadic relationship towards multi-actor interactions in labor law compliance

Past: Weak state enforcement



Present: Strong “bottom-up” enforcement and normative pressures from multiple actors

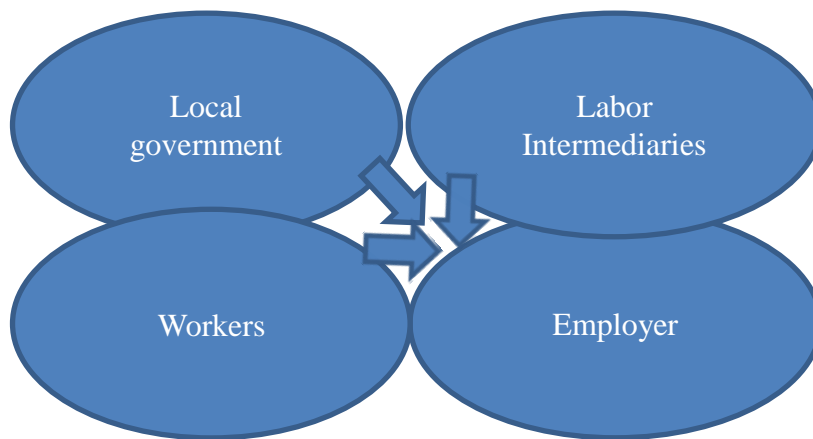


Figure 4: An Emerging “Bottom-Up” Enforcement Model in China

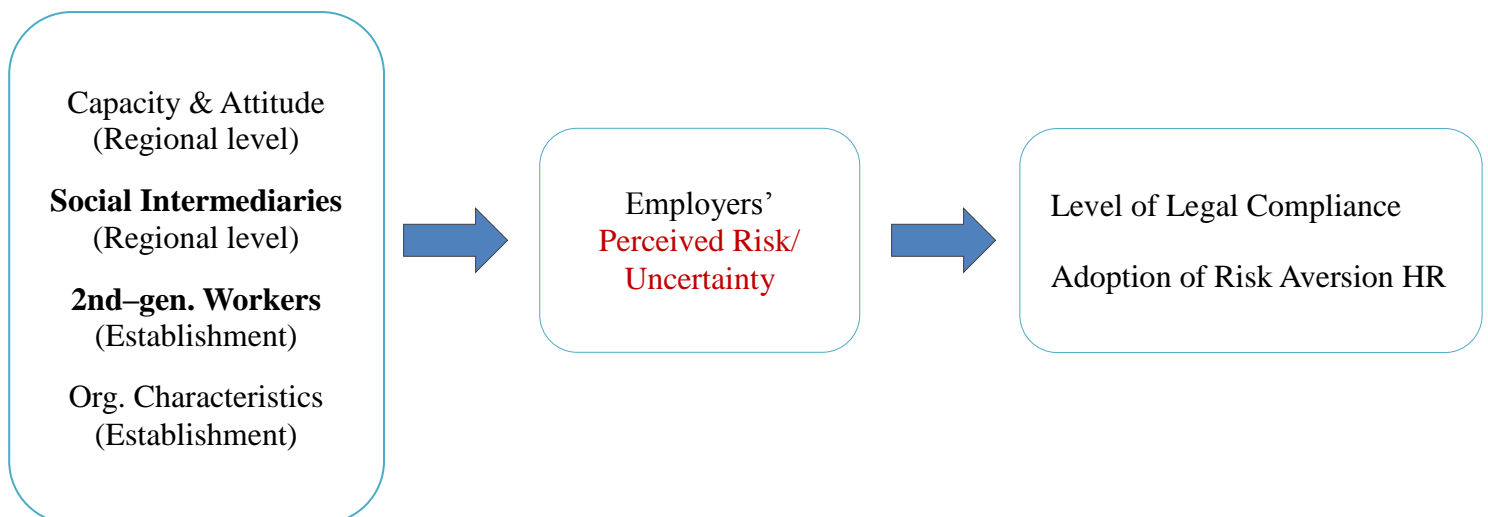


Table 1: Determinants of enforcement/ compliance in a “bottom-up” regulation model in China

Determinants	Employers	Local Government	Social Intermediaries	Workers
Specific factors	Size Age Ownership Union presence Order fluctuation Last-minute deal Ratio of locals Presence of HR dept. External HR/labor feedback	Enforcement capacity Leadership’s attitude Major industry Unemployment rate	Aggregate level -Atmosphere -Overall strength -Overall activeness Each intermediary -Media -Online social networks -Lawyer/law firms -Regional trade unions -HR/labor consultants -Legal clinics -Labor/migrant NGOs	Age Education Work experience Internet access Newspaper readership Dispute experience Hometown Length of stay (migrants)
Notes	Traditional Actors		New Actors	

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CHAPTER 3

A PLURALISTIC, PRAGMATIC APPROACH TO LABOR LAW COMPLIANCE IN CHINA

Labor abuse is one of the major unwelcome side effects accompanying China's rapid economic growth. There is widespread evidence that factories violate legal provisions and subject their workers to low wages, excessive and involuntary overtime, and health and safety risks (Lee 2007, Pun 2005). Mary Gallagher (2005) characterizes life in the country's factories as "nasty, brutish, and short" (p. 79), and stresses that, even under a labor contract, nothing is guaranteed, as employers prioritize production processes and their company's financial situation over adherence to law. Ching Kwan Lee (2007) notes that workers' three major grievances are wage non-payment, disciplinary violence, and industrial injuries (p. 164).

Responding to increasing concern over poor working conditions, the Chinese government enacted several pro-labor laws in 2008; the Labor Contract Law (2008) strongly encourages aggrieved workers to bring their grievances to legal mechanisms, with fairly high returns for filing workers. Moreover, the New Mediation and Arbitration Law (2008) has surely streamlined the grievance procedures; it encourages aggrieved workers to "use the law as their weapon," (Gallagher 2005) by new measures including 1) simplifying the arbitration procedures, 2) shifting the proof burden to employers, canceling arbitration fees, extending filing periods, and introducing partial awards. However, there exists still considerable skepticism regarding how well the law is enforced, given that labor costs are still a primary issue to business strategies in China, the restricted capacity to enforce the law, and the lack of workers' voice in China due to the absence of strong, independent labor movement (Kuruvilla, Gallagher and Lee 2011, Friedman and Lee 2010, Chen 2007).

Against this backdrop, this paper deals with labor law compliance in contemporary China, with an examination of the reactions of factories to recent labor laws, and an investigation of the causes of the variation in compliance, that I found during my study in factories and in legal provisions. Departing from the traditional dyadic “local government-employer” approach, I suggest a more “pluralistic, pragmatic” approach to labor law compliance in contemporary China, which is a reflection of recent substantial institutional changes. My approach is *pluralistic*, because I argue that the state agency is not the sole source of pressure on employers for better labor standards; there are two new actors (the new generation of workers and diverse labor intermediaries) who have a growing part in influencing compliance with labor laws. It is my position that these various “bottom-up” pressures contribute to heightening the violation costs that employers perceive and, therefore, employers are more likely to follow labor laws in order to decrease the danger of their being found in violation of those laws.

The term *pragmatic* reflects my assertion that actors’ various interests in different legal provisions influence compliance by employers. My emphasis is on the actors’ varying attitudes towards several legal provisions. These three actors (local government, new generation of workers, and labor intermediaries) behave differently according to their varying interests in each legal provision. Employers respond in various ways to each legal provision after they take the differing violation costs of each one into account. Specifically, when the interests of these three actors converge, the result (employer response) is clearly towards either compliance with or violation of the legal provisions. On the other hand, when the interests of the actors are vague or ambivalent, the result will show great variation between compliance and violation. Furthermore, the vagueness and/or ambivalence of actors’ interests tend to cause symbolic or creative responses from employers to the legal provisions, testing the line between legal and illegal.

With this “pluralistic, pragmatic” framework of compliance in China, I explain the overall enhancement as well as the great variation in compliance that I found in the course of my research. Specifically, overall enhancement in compliance is attributed to the stronger diversified bottom-up pressures of the relevant actors. When it comes to the variation in compliance across legal provisions, the flexibility of actors’ interests matters; in regard to written labor contract requirements, increased compliance took place quickly (thick compliance) due to the intersecting interests of the actors in the direction of compliance; whereas the much slower change in the direction of compliance regarding social insurance (thin compliance) is because of the actors’ diverging interests around compliance. For all actors, there is a complete lack of consideration/concern for compliance with OT hour restrictions, thereby leading to outright violation of this provision (non-compliance).

To summarize, I argue that diverse actors engage in labor law enforcement and compliance upon their differing interests at the local level in contemporary China, thereby leading to overall enhancement in compliance, as well as wide variation in compliance across legal provisions. I suggest that my “pluralistic, pragmatic” approach can offer a more complete explanation of the wide variation in compliance and further the institutionalization of fragmented compliance in contemporary Chinese workplaces.

The remainder of this paper is as follows. In the next section, I review existing studies and propose my framework, which is followed by detailed explanations about recent institutional changes and two new actors’ bottom-up pressures. Then, I provide descriptive findings which are then analyzed closely. Finally, I summarize my research and discuss theoretical and practical points, as well as contribution and limitations of this paper.

LITERATURE REVIEW AND MY FRAMEWORK

Local government (specifically, the labor department) in China has the authority to affect employer's decision of compliance with labor laws. Since labor unions and civil society are considered to be absent in the picture of employer compliance,²² local government has been viewed as the sole source of enforcement regarding labor law. In principle, the local labor department in China can address violations in various ways (for more details, Cooney 2007a, 2007b). However, this dyadic relationship of labor law compliance has been subject to criticism. As local governments take economic development and investment attraction as their priority, labor officials minimally conducted their roles (Chen and Sil 2006, Friedman and Lee 2011, CLB 2007). As Mary Gallagher (2005, p.77) notes, "Local enforcement of the labor law and other regulations is extremely weak and compromised by the need to attract and retain investment and growth of the local economy." Hence, labor departments were criticized for being largely inactive, unless the cases involved a large scale protest (e.g., recent Honda Strikes), an act of suicide (e.g., Foxconn workers' suicides), or a top-down order (from the central government) or damning media coverage. Accordingly, when caught for labor law violation, employers could easily negotiate with labor officials under the table (Cooney 2007a, 2007b). Given this situation, most of the literature about labor standards in China has blamed it all on "weak," "lax" or "arbitrary" enforcement.²³ These studies have implicitly and explicitly argued that weak enforcement is responsible for weak compliance, and suggested that the stricter enforcement by the state agencies would surely bring about higher compliance. This logic draws mainly on deterrence theory in regulatory compliance literature (Becker 1968, Stigler 1971,

²² See Chen (2007), Friedman and Lee (2011), Lee and Shen (2010)

²³ For instance, see Chan (2001), Chen (2007), CLB (2010), Cooney (2007a, 2007b), Gallagher (2005), Lee (2007), and Halegua (2008).

Polinsky and Shavell 2000). Scholars such as Becker (1968) suggest that the regulated will comply with regulations when the expected punishment associated with non-compliance, namely, violation costs, exceeds the costs of compliance. As violation costs are determined by the probability of being detected (or caught) and the severity of being punished, the solution would be either heightened inspections or strengthened legal provisions.

Although it appears to be convincing, this approach has also been criticized. It is pointed out that the deterrence approach tends to overstate the role of law and enforcement in enhancing compliance, and conversely, to overlook other factors (e.g., firm incompetence and ignorance including management's lack of relevant knowledge) (Bardach and Kagan 1982, Ayres Braithwaite 1992, Gunningham et al. 2003, Kagan and Scholz 1984). Existing studies question the impact of deterrence on compliance and the compliance-sanctioning relationship (Gray and Scholz 1981, Braithwaite and Makkai 1991). More importantly, the Chinese context defies the underlying assumption (a strategic calculation of objective violation costs in a predictable regulatory environment) of deterrence approach. Top-down preventive inspection, which deterrence approach assumes, is very rare in China. Practically, this kind of heavy-handed approach requires substantial financial cost in order to cover such a large country and to deal with increasing problems occurring in an ever more complicated workplace. Realistically, the Chinese government could not meet budget requirements overnight.²⁴ Moreover, as Piore and Schrank (2008) highlighted in their studies based on the Latin American context, my finding confirmed that violations often occur due to incompetence or ignorance rather than because of a firm's strategic calculation of violation costs versus compliance costs.

In this paper, I challenge this dyadic "local government-employer" framework and the

²⁴ When it comes to local enforcement capacity building, multiple informants confirmed that the budget had not been noticeably increased for the last decade.

deterrence-based top-down enforcement approach. I argue that the current literature, which still draws on this dyadic enforcement/compliance framework, fails to acknowledge the substantial institutional changes on the ground. I shed light on the latest changes on the part of the new generation of workers and labor intermediaries, and emphasize that these new actors play an increasingly important role in moving employers towards compliance with labor laws.

Theoretically, this new framework emphasizes that recent significant increase in diverse ‘bottom-up’ legal activism by these two new actors (e.g. by reporting to local labor bureau, filing a case to an arbitration committee or to a court, and publicizing to the local public) contribute to increasing the perceived violation costs on the part of employers under the recent Chinese employment protection system, in which there exists a clear rule that the case received must be addressed.

I propose a more pluralistic framework that consists of four actors – local government, workers, labor intermediaries, and employers. Specifically, by the local government, I mean all the local government authorities, not simply the local labor bureau. By the employer, I focus my interest on private factories, which have autonomy in determining their labor law compliance, unlike state-owned enterprises (SOEs). I assume in this paper that employers on the local level determine their compliance level after taking all factors into account. Third, by the workers, I mean individual, independent employees. I emphasize that recent legal mobilization of workers is mostly based on individual workers’ exertion of their legal rights through state-designed vehicles (labor bureau, labor arbitration committee, and court etc.), which was significantly streamlined by the new law in 2008. Finally, by labor social intermediaries, I mean the individuals or organizations that have a relatively high level of technical knowledge of labor/employment issues, and supply acceptable norms and practical solutions to employers,

local government, and individual workers in labor arenas. Labor intermediaries include various labor-related professionals (including journalists, labor lawyers, labor consultants, regional union staff, and labor arbitrators).²⁵

At this point, it is worth noting recent significant institutional changes underway in China. In terms of the legal context, a series of new labor laws has greatly increased potential fines to violating employers and direct financial returns to filing workers, while making it far easier for aggrieved workers to express their voices via official mechanisms (e.g. labor bureau, arbitration committee, and court). For instance, Articles 10 and 82 of Labor Contract Law in 2008 stipulate that failure to sign a written contract with an employee within a month results in a penalty of paying the worker double wages for any time served without a written contract. Articles 46 and 47 stipulate that workers can voluntarily terminate their labor contract and still receive severance pay equal to one month's wage if the employee resigns by reason of employer violation, such as non-purchase of social insurance or overtime hour/wage violations. Compared to other

²⁵ Two points are notable. First, my original definition of labor intermediaries was broader. It included barefoot lawyers, various NGOs and legal clinics, as recent studies indicated (Kuruvilla et al. 2011, Friedman and Lee 2010). However, I noticed that, in my research context, these actors were absent, and the influence of nearby areas' barefoot lawyers, NGOs and legal clinics (at least 2-3 hours' driving distance away) rarely reached this area, as most of my informants confirmed. For this reason, I exclude these actors here. The second point is about regional labor unions. Slightly different from existing studies, the regional union staff in my research context has much more discretion and authority, although still controlled by the local government's direction. In addition, when it comes to the relationship with local labor officials, it is neither hierarchical nor controlled by the labor department. Since the local union chairman is often either a previously second or third person in the local government or comes from a provincial government, the local labor department cannot easily control regional unions. Further, I noticed that the regional union's staff tends to be more experienced because they usually have a longer tenure in the labor area, compared to labor officials who move to other departments a few years later. One last point is that regional trade unions engage in real workplace issues more frequently than labor departments which spend most of their time on workforce issues (supply and demand of workers) and labor administration issue (reporting to upper-level government). Even compared to labor inspection unit of labor department, I emphasize that regional trade unions engage in workplace issues in a relatively subjective manner at their discretion which is different from the more or less mechanical manner ("if a complaint is received, go to the site and inspect it") of labor inspectors. All these issues considered, my definition of labor intermediaries in this paper refers to journalists, labor lawyers, labor consultants, regional union staff, and labor arbitrators.

developing countries, this degree of tangible compensation and returns for filing workers is quite distinctive. In addition, the Labor Arbitration and Mediation Law in 2008 significantly streamlined the grievance procedures for workers. It extends the application period from 60 days to one year and requires no arbitration fees (previously, a few hundred RMB on average). It is of note that, while labor officials rarely conduct preventive inspections, it has been significantly regularized that complaints must be investigated if accepted and filed. As long as the worker satisfies the minimum reporting requirements, such as providing employer information and filing within the correct inspection boundaries, labor officials are obliged to complete investigations of complaints within 60 days, or for more complicated cases, 90 days. Under this stricter policy, labor officials cannot ignore worker complaints as they would be sanctioned for their inaction if workers then reported them to upper level state agencies. Several officials interviewed revealed that as labor unrest has become more serious in southern China recently, upper-level governments are increasingly attuned to labor officials' inaction issues. Accordingly, compared to the past, labor officials have come to have little freedom to dismiss blatant and egregious employer wrongdoings. The courts also defy conventional norms. Unlike political issues, employer wrongdoings are not that sensitive to local courts. Currently, the courts deal with cases relatively fairly and pass verdicts on the basis of relevant labor law (Jiang 2009, my field interview in May 2010). Therefore, if an employer appears to violate, and a filing worker provides the necessary evidence (e.g. overtime hour log, a proof of employment relationship etc.), the judge has to rule in favor of the plaintiff worker, that is, according to the law. More importantly, the courts lowered their court fees in 2006. For cases involving less than 10,000 RMB, courts receive a 50 RMB fee and, for those above 10,000 RMB, they receive 2.5 percent of the amount at issue (Jiang 2009).

In this context, two previously-absent actors (the second-generation workers and labor intermediaries) have become pivotal in boosting labor law compliance in China. Conventional wisdom is that workers and labor intermediaries matter little in discussions of labor law compliance in China. Enforcement and compliance have been considered a result of dyadic interaction of local government and employer. If workers were considered at all, they were depicted as wild-cat strikers appealing destructively outside the legal framework, and having no lasting influence on local enforcers and employers. Similarly, labor intermediaries were easily discounted as party organs or government puppets, since they had no discretion or were under direct control of the party-state. However, these two actors have recently emerged as indispensable actors in labor law compliance.

LABOR INTERMEDIARIES

These labor intermediaries (e.g., journalists, labor lawyers, labor/ HR consultants, labor arbitrators, and regional trade union representatives) were either easily considered as party organs or government puppets under the tight control of the party-state or absent due to a lack of need in business. They were not important in discussing labor law enforcement and compliance in China. However, along with continuous labor abuse and increasing labor unrest in recent years, the Chinese government came to recognize the necessity of these kinds of intermediaries to address employer wrongdoing and care for marginalized workers particularly under the state's relaxed grip on society.²⁶ By encouraging labor intermediaries to handle increasing workers' complaints in a timelier manner within the legal framework, the government intends to prevent worker grievances from spilling out beyond the local legal channels and threatening the regime.

²⁶ See literature on Chinese authoritarianism: for instance, Nathan (2003), Lorentzen (2008), Shambaugh (2008).

Accordingly, resolving workplace issues has become the one of few activities that societal “input” actors are allowed to aggressively pursue under the otherwise strong authoritarian regime. Now, labor intermediaries smartly make the most of newly bestowed authority and discretion for their own ends as well as for workers’ interests.

I categorize the work of labor intermediaries into three arenas. First, they help redress worker grievances by providing legal knowledge and consultation or representing workers in grievance procedures. Regional trade unions (ACFTU), local media, labor arbitrators, and labor lawyers (involuntary or voluntary) all contribute to the recent, substantial increase in the number of reports filed by aggrieved workers. For instance, one worker interviewed mentioned that a ‘judgment for the worker’ case he read about in the labor news section was identical to his own and thus he was sure he would receive a similar favorable judgment by the arbitration committee. Second, these intermediaries offer acceptable standards and solutions to employers in recent China where labor law is so far removed from the reality. Having no idea about what exactly is required of them due to the huge gap between law and reality, employers eagerly seek after these intermediaries’ advice and pragmatic solutions. I found that one lawyer interviewed, who was also a part-time labor arbitrator, was well-received by local business people due to his hands-on knowledge and experience. Finally, these intermediaries often forward bottom-up voices to local head officials and suggest realistic guidelines for the local government’s labor policies. During my stay in the area (a total of 5 months over three years), I noticed that the local government often held seminars and sought to get a sense of how employers and workers felt about these regulations via these intermediaries.

WORKERS

Numerous media reports and academic studies indicate that today's so-called "second-generation" workers, which accounts for 60 percent of the estimated 220 million migrant workers in China, differ from their parent generation (Yu et al. 2010, Chang 2008). These workers, mostly the only child in their families, are relatively better educated, more individualistic, straightforward, demanding, and determined to achieve personal development and freedom (Davis 2000, Pun 2003, Yan 2008, Jacka 2006). They make full use of high tech tools, such as mobile phones and the internet. Workers share information about the best jobs with the best wages and benefits, news about peers winning arbitration awards, and even details about the latest sexual harassment cases at the factories. Young workers can now use their mobile phones to take pictures documenting a factory's internal goings-on such as labor abuses and harassment, to use as evidence in future legal action (Roberts 2010, interviews in June 2010). At the same time, more and more workers are getting together on social network sites, blogs, and online forums. Zhang (2010) indicated that about two-thirds of the auto workers that she interviewed were regular bloggers or active participants of online discussion boards and social networks.

These young workers are less loyal to their employers (Smith et al. 2004) and have a tendency to quit at any moment they feel dissatisfied. They are much less hesitant to file complaints of employer wrongdoing than their predecessors. Backed by a series of pro-labor policies, these workers use labor laws and official mechanisms as their source of leverage, often with the help of diverse labor intermediaries.

Having said that these diverse bottom-up pressures capitalizing on recently streamlined institutional procedures can account for overall enhancement in compliance, I argue that wide variation across different legal provisions is attributable to actors' flexible attitude to each

provision. Each actor responds to each provision with a certain measure of flexibility. Specifically, my finding reveals that workers showed keener interest in and deeper knowledge about written labor contract requirements, while many of them have no interest in overtime regulations, nor do they know that 36 hours per month is allowed. Even some of the labor intermediaries tended not to update their knowledge about specifics of local social insurance regulations, while most of them had much clearer understanding of written contract specifics. Given the situation that labor inspection is thoroughly complaint-based, employers are accordingly motivated to respond better to the sensitive issues (in which workers, labor intermediaries, and local government have keener interests), while still disregarding rarely sought-after provisions. When this signal from pressure-creator is ambivalent or vague within actors and/or across actors, it may cause wider variation in employers' responses, as will be shown in social insurance issues below. Employing regulatory compliance terms, it can be said that the perceived violation costs on the part of employer vary upon the legal provision's degree of sensitiveness, thereby leading to employers' differing actions to each provision.

In summary, I argue that multiple actors engage in labor regulations according to their differing interests at the local level in contemporary China. My framework of compliance in China includes two traditional actors (local government and employer) and two additional actors (new generation of workers and labor intermediaries), and compliance is contingent upon actors' differing interests and circumstances. Theoretically, although I basically build on deterrence literature (violation costs), I seek to fit regulatory compliance literature to the Chinese context by highlighting the perceptual risk, not the objective risk, caused by bottom-up pressures of diverse actors. I argue that these new actors' bottom-up pressures significantly increase the perceptual risk of being detected on the part of employers who either directly violate the law or

continue high legal risk workplace practices. Employers are accordingly motivated to comply with laws to reduce potential risk. In addition, I argue that employer compliance is moderated by differentiated interests of different actors.

Insert Table 2 about here

DESCRIPTIVE FINDING

Before going further to a detailed description, I point out the shortcomings of the current studies in two respects. Above all, existing studies tend to fail to provide a balanced picture of factory-level compliance; most studies tend to lead to a simple conclusion that sweatshop factories do not comply with labor law. This is, I argue, because these studies are based on the stories from the side of filing workers or labor venues (e.g. labor NGOs) given the difficulty in accessing primary, systematic factory-level data. Another concern is that most studies tend to overlook the fact that labor law compliance differs across industries as well as across regions. My preliminary field research and numerous reports (for details, see reports published by global NGOs such as FLA, MakeItFair, SOMO, Good Electronics) show that labor practices vary significantly across industries due to the differences in terms of products, production style, and workers employed. In addition, it is well-known that local institutional conditions such as local economic and political circumstances make employers act differently (Lee 2007, Hurst 2009). Given these issues, to assure a systematic comparison by controlling for industry and region, my research focuses exclusively on the electronics industry in one special economic zone (SEZ) in southern China. My qualitative and quantitative data were collected through multiple methods. Compliance data was directly collected by site visit including me and/ or consultation team. I took part in a sort of

legal consultation task with local labor lawyers and HR consultants. The 23 factories include Chinese, Taiwanese, Hong Kong, and Korean factories. During each visit, I started by going over factory documents, regarding e.g. OT hours, social insurance payment, and written contracts. In addition to collecting compliance data, I conducted numerous interviews; I interviewed a total of over 100 HR managers (or a general manager in the case of the HR manager's absence) who had a long tenure and had deep understanding of their factory's practices. The labor practices and interviews with management were closely checked and complemented by qualitative interviews with workers and nearby staffing agencies which possessed diverse real information about factories in this economic zone. To explore the wide variation in compliance, I interviewed 27 local-level and grass-roots union representatives, 24 lawyers, over 100 workers, 9 labor scholars, 2 labor NGO staff members in nearby areas (because there is no labor NGO in this zone), 4 labor officials and arbitrators, 4 HR/labor consultants (including some from nearby areas) and 7 local government officials.

The sample factories in this study are relatively stable, mid- or large-size electronics factories. This means that, relatively speaking, they are more likely to comply with labor laws than smaller labor-intensive factories either in the electronics industry or in other industries such as toy, food-processing, leather-processing, and garment. Therefore, the labor law provisions which the sample factories did not comply with are highly likely to be violated by their smaller, other labor-intensive industry counterparts. I examined employer compliance in over 60 categories of legal provisions of Labor Law (1994), Labor Contract Law (2008), and Regulations on Inspection (2004). Among the 60 categories, in examining employer compliance, I focused on three legal provisions: written labor contracts, provision of social insurance, and overtime practices. I chose these three legal provisions because they have recently received considerable

attention from the Chinese government, civil society, MNCs, and international labor groups.

Written labor contract: Thick Compliance

I examined two aspects of the legal provision about written labor contracts: the process of contract signing and the contents of labor contracts.

Insert Table 3 about here

1. Process

The process of signing contracts is no less important than the contract itself. Relevant legal provisions stipulate that an employer a) “sign a written labor contract” with an employee b) “within a month” and that c) “a copy of their employment contract be given to the workers.” I found that 91 percent of the factories in the sample (21/23 factories) signed a written labor contract with workers within a month. Some factories sign the labor contract on the worker’s first or second working day; others do so after completion of an on-the-job training period, usually one to two weeks. Both forms of compliance are legal, because the law stipulates that the signing process shall be done within one month. Two factories (factory 10 and factory 20) do not conclude a labor contract until after one month. The HR managers there explained that many workers leave the factory without notice within the first month and thus management intentionally delayed signing contracts.

I found that 87 percent of the factories in the sample (20/23 factories) give one copy of the contract to a worker after signing it. Article 16 of the Labor Contract Law stipulates that a copy of the labor contract must be given to the worker. A copy of the labor contract is critical because it can prove the employer-employee relationship in case of labor disputes later on. In case of wage arrears and work injury, a copy of the labor contract is one of the few pieces of evidence

enabling workers to get legal compensation in the face of unethical employers. There have been a number of cases in which local enforcers with good intentions and sympathy toward workers ended up resorting to informal negotiation between two parties, due to the absence of a labor contract.²⁷

I found that three companies (factories 6, 10, and 20) did not give a copy of the contract to their workers, keeping it in their offices instead. It should be noted that HR managers as well as workers do not take this practice (giving a copy of contract) seriously while paying relatively high attention to contract signing. HR informants said that workers never asked for a copy of their contracts, nor did they raise any issues about that later. Some HR managers believed that it was safer for management to keep both copies, because they thought that young workers might lose theirs. However, because the employer usually does not have any ill intentions, when they are instructed by lawyers or others that this practice is illegal and leaves them vulnerable to penalties, HR informants made an effort to change their high-risk practice.

2. Content

Previous studies and media reports indicated that it was not uncommon for workers either to sign blank contracts or foreign-language contracts or to have their contracts modified later without their consent (e.g. Chan 2009). However, my study shows this not to be true, at least in the electronics industry. No factory in my sample used blank or foreign-language contracts, and no company was willing to change its contracts without worker consent. Almost all of the factories in the sample buy labor contract forms from the local government. The price of one two-part form (one company copy, one worker copy) is 1.5 RMB (\$ 0.22). They buy the forms from the local government for several reasons. First, designing their own contract form is time-consuming

²⁷ Interview with labor officials and labor arbitrators in May 2010

and legally-risky, particularly for small companies. Most HR informants said that they did not want to waste their time and resources to devise their own labor contracts, especially, since there is usually only one HR staff member, if any, in charge of contract issues in most small or mid-size factories. Furthermore, if that HR staff member does not have a thorough knowledge of labor laws, the company faces legal risks if workers report to local governments or when the local inspectorate visits to check the labor contract form. Therefore, small factories conclude that buying contract forms from local government is more desirable than designing their own.

Another commonly mentioned reason for using government forms is that employers do not want to create tension among new workers, who often have trouble trusting their employers initially. These workers tend to feel safer signing a government-issued contract form. One HR informant said, “When we used our own contract, some workers took a very critical look at the labor contract, doubting it. Because we did not want to cause an unnecessary dispute, we began to use the local government-made one.” Three companies (factories 11, 21, and 24) used their own labor contracts to their advantage. HR managers there said, “Because the government one is very simple and general, it does not contain company-specific details. Because we have enough HR staff in charge of the process and enough resources, we customized the labor contract to fit the company’s situation, of course, complying with all rules in labor law.” HR managers said that, given the company’s large size and local reputation, workers in general trust management-designed internal contracts.

According to Article 12 of the Regulations on Labor Inspection, the minimum wage is defined as being exclusive of payments for any overtime worked, employer-provided social security premiums, and other benefits. The basic wages set by individual factories cannot lawfully be lower than the local minimum wage. All of the factories in my sample comply with the minimum

wage provision. However, the reality is that the meaning of minimum wage specified in the labor contract is more important as a base amount for the calculation of OT compensation.

New labor laws emphasize that workers must be paid worker benefits under special situations such as work-injury medical leave. Therefore, labor contract must include specifics about the wage during work-injury medical leave. Eight factories did not specify wages under work-injury medical leave. One factory paid less than the legally-required 80 percent of normal wage. The HR managers in these factories blamed their insufficient knowledge of labor laws. It is notable that, while most HR managers are well aware of critical provisions, they have little knowledge about those regarding work-injury medical leave.

Social insurance payment: Thin Compliance

Insert Table 4 about here

Workers' social insurance consists of five insurance benefit programs: retirement, medical, maternity, work-related injury, and unemployment. All employers are legally obliged to register the total number of employees on payroll and the purchase of social insurance products. All of the five insurance items are bundled together in the area where my sample companies are located. Employers are not allowed to break the insurance program into separate parts. Employers deduct workers' own contributions from their monthly salaries. The amount is approximately 20-30 percent of worker wage to employer and approximately 10 percent of workers to worker.

My investigation found that there was huge variation in compliance with the social insurance provisions. Only one factory purchases the entire insurance packages for all workers. The other

factories do not purchase social insurances for all employees. Three factories buy the social insurances for 90-100% of workers, four factories for 80-90% of workers, two factories for 60-70% of workers, three factories for 50-60% of workers, one factory for 40-50% of workers, three factories for 30-40% of workers, and one factory for 20-30% of workers, and two factories for 10-20 % of workers. With regard to the number of social insurances bought, most factories tend to buy all five social insurances bundled together and do not break the insurance program into separate parts.

In analyzing this situation, I identified that there are three types of employer compliance as per social insurance payment. The first type includes the factories that purchase social insurance for over 80 percent of their workers. The factories in this category have a policy stipulating that they will provide all five mandatory insurances to all workers whenever possible. The second group includes the factories that purchase social insurances for 50-60 percent of their workers. The factories in this category tend to purchase insurances only for management staff, senior or skilled production workers, and workers who perform high-risk jobs in the factory. The employers generally follow two steps for risk aversion. First, they require workers to confirm their decision regarding non-purchase of social insurances with a fingerprint signature. Second, they usually purchase commercial insurance for the uncovered workers either in the workers' names or under the company name. Commercial insurance products have become increasingly popular, although they cannot become a legal substitute for mandatory social insurances. By purchasing commercial insurance, employers save money and receive some amount of payment in the case of work injury. The third group includes the factories which purchase social insurance for only 20-30 percent of their workers. The factories in this category tend to purchase insurances for core

staff and only some production workers such as senior production managers.²⁸

Insert Table 5 about here

Insert Figure 5 about here

Overall, I found that there is still a lack of knowledge and interest in the area of insurance among employers and workers alike, exacerbated by the fact that local government policies are not unified and are constantly changing. Workers generally have a poor understanding of which insurance they are covered by and what rights they are entitled to in case of a work injury. HR managers in charge of insurance benefits do not have in-depth knowledge of the legal provisions or process, either. I noticed that even local officials in charge of social policy cannot give timely or precise answers to employers because laws and law enforcement fluctuate depending on local circumstances. However, through the interviews, I found that an increasing number of workers are becoming informed about social insurance issues through media reports or hometown migrant worker networks. As labor officials pointed out, middle-aged workers in particular are beginning to realize the importance of social insurance as they look towards their retirement or the health needs of their immediate families and thus more and more workers are inquiring about

²⁸ It is notable that although the law stipulates that employers purchase insurance at the time a worker starts his or her work, a large proportion of them delay the purchase, until after a probation period, citing the fact that a large number of workers quit their jobs before the probation period ends. When migrant workers first arrive in an industrial area from their hometown, they tend to take any job available. Later on, when they hear about better working conditions elsewhere, they do not hesitate to quit without notice. Given this situation, employers have little motivation to hurry the process of registration and social insurance purchase, which HR managers and local governments alike acknowledge is time-consuming, boring, and troublesome. Thus, some local governments are said to make a rule that employers may delay new registration and insurance purchase for a certain amount of time which employers reasonably deem to be until the probation period ends. One dilemma created by this, however, is that many work-injury accidents are incurred by uncovered workers during the first few weeks of employment. Understandably, many HR managers raised this issue in meetings with our labor consultation team.

social insurance via the websites of local labor departments.

OT hour restriction: Non-Compliance

Insert Table 6 about here

Excessive overtime is a well-known problem in China, despite the existence of pertinent laws (Verite 2004, FLA 2008). My study indicates that most factories follow a similar work hour schedule. The typical shift is from 7:30 am to noon, and from 1:30 to 5:30 pm with 10-15 minute breaks every two hours. Evening overtime shifts are generally from 6:30 to 9:30 pm. This same schedule is followed on weekends, with usually 1-3 Sundays off per month. In this study, overtime practices were looked at in terms of three areas: hours, premiums, and rest days. First, my study shows results similar to others that overtime exceeding 100 hours per month is prevalent in these regions. There is no factory that complies with the labor law limit of 36 hours OT per month. The number of factories and the average number of OT hours worked by their employees are as follows: 19 factories out of 23 allow more than one hundred overtime hours per month; six factories 100-120 hours; seven factories 120-140 hours; three factories 140-160 hours; two factories 160-180 hours; one factory over 180 hours. When the MNC code of conduct is applied, only one out of 23 factories can be categorized as an “acceptable” group.

Insert Figure 6 about here

On the other hand, it was found that most of the factories (22 out of 23) pay the legal overtime premium, as stipulated in labor law (150 percent of normal rate on weekdays, 200 percent of normal rate on weekend, and 300 percent of normal rate on statutory holidays). The one factory still pays a flat 150% of the normal rate, regardless of the day. As for rest days, I found that most

workers in all 23 factories work on Saturdays and rest on some Sundays. As for the number of Sundays off, factories vary. Thirteen factories follow the law requiring that workers be given at least one day off per week (Labor Law Article 38). Four factories, however, give workers only three Sundays off per month, four factories two Sundays off, and two factories one Sundays off.

ANALYSIS

Legal Provision 1 (Written labor contract): Interest convergence towards compliance

Overall, the findings show that the written labor contract requirement is the provision that meets the government's initial intention to enact a series of new laws. Compared to previous national statistics,²⁹ the increased rate in my finding is impressive. Recent studies also show similar results to mine (e.g. Li 2011, Becker and Elfstrom 2010). As to relatively higher compliance and rapid institutionalization of written labor contracts, I explain below in detail through the lens of actors' high interest and its convergence towards compliance.

1) Labor intermediaries

I found that when it came to written contracts, labor intermediaries became exact enforcers of the letter of the law themselves. Most intermediaries actively facilitate worker's bottom-up legal mobilization, respond quickly to worker's grievances about employer violations of labor contracts, and actively give workers advice on how to address their grievances. Labor arbitrators do not give any grace period but force employers to correct the problem. Labor lawyers prefer this kind of "labor contract" case to other cases, because their chances of winning are so high; the case of an employer who does not sign a contract with a worker is so cut-and-dried that lawyers do not need any special preparation to win it. Company-side labor lawyers advise their customer employers to sign a written contract as well. The local media are more than willing to

²⁹ The rate of signing a written labor contract was 20 percent of workers surveyed in 2001.

expose this type of violation, especially when it involves a well-known employer, because it can attract attention and simultaneously satisfy the government's expectation that the local media aid in detecting and revealing local corruption and injustice. At seminars held by local governments, these intermediaries often overtly support stricter enforcing of written labor contract requirements, regardless of their real stance (e.g. even outright company-side labor lawyers). It should be mentioned that, aside from economic interests, labor intermediaries operate out of a strong set of moral values.³⁰ When asked why they take written labor contract requirements so seriously, surprisingly, most of intermediaries interviewed mentioned moral grounds. Common responses included: "Migrant workers are human beings as well...we should treat them well...That is the way we live." "They are my sons and daughters." "China was an egalitarian country. Look at the life of migrant workers. It is our responsibility to take care of them." One labor arbitrator emphasized that although new labor laws were unrealistic, there were a couple of provisions that employers nevertheless must comply with, because they, the employers, essentially feed the workers.³¹ It appears that these labor intermediaries, having been exposed to so many miserable situations involving workers, have developed their own criteria in dealing with cases. Their experiences have led them to determine that a written labor contract is a must-do, morally and practically, to protect vulnerable workers. They have made it a moral criterion that, regardless of employer circumstances, a written labor contract be signed within a month. In summary, all these activities of labor intermediaries contribute to facilitating a worker's legal activism through state-designed vehicles, creating a local-level compliance culture pushing employers towards compliance, and indirectly arousing labor agencies' stricter enforcement of legal provision. By doing so, labor intermediaries contribute to the heightened compliance and

³⁰ This finding is based on my interviews with about 60 labor intermediaries.

³¹ Interview with labor arbitrator in June 2010.

rapid regularization of written labor contracts in local society.

2) Workers

Currently, workers tend to consider a written labor contract to be an essential item, unlike their parents' generation who either did not care much or was forced to work without contract.

Informants commonly mentioned several reasons for this new-found interest in self-protection.

One reason is due to the changed mentality of the new generation of workers. As one Chinese scholar mentioned (2007), "these young workers have much stronger rights mentality than past generation." Young workers are clear about monetary relationship. Basically, these young workers consider their job place to be a temporary stop for better opportunities. Since they may quit at any time, they have a tendency to prefer a clear contract relationship to calculate receivables and payables in the relationship with their employer, rather than an implicit psychological contract built on long-term tenure. Moreover, the Chinese people have been exposed to diverse worst scenarios of their relatives and friends who suffered from the absence of an employment relationship proof in the cases of wage arrears, work-injury compensation etc. In particular, the huge debates which ensued during the introduction of new labor laws between 2005 and 2007 kept workers glued to media reports for a significant time. Migrant workers, being far from their hometown, want to be assured of a fair and regular wage by signing an authentic labor contract with their employer.

Further, a strong financial return for filing is attractive as well. A couple of HR managers interviewed pointed out that some workers purposefully delayed contract signing in order to report that issue to labor agencies.³² As a very small number of HR staff members deal with HR jobs, factories sometimes need a worker's voluntary notice about signing or renewing a contract.

³² Interview with HR managers in June 2010.

I heard that some workers in this situation purposefully remained silent to capitalize later on employer's mistake or delay. Of course, the signing of workers' contracts involves the workers' responsibility as well, which means that their written contracts are not always beneficial to themselves; they cannot easily break their consent if they receive a better offer from a competitor factory, as they did easily in the past (Articles 22, 23, and 24 of the Labor Contract Law). I nevertheless found that workers appear to put a written contract ahead of a non-contract after considering all issues.

External influences from diverse societal actors deserve attention as well. These young workers came to enhance their legal knowledge and willingness to file a grievance for non-labor contract with the help of diverse societal actors. When asked about the source of their legal knowledge and rights awareness, most workers pointed out diverse outlets including television programs, radio, newspapers, internet blogs, online forums, the local union's legal clinics, and pamphlets at local job centers as their sources.³³ Most of the workers interviewed are aware of the "double wage" rule that an employer's failure to sign a written contract can benefit workers later with a double wage recompense,³⁴ and they show willingness to report to the local labor bureau to receive financial awards when facing no contract in a new workplace.³⁵ It is also notable that vocational school graduates show higher awareness of this legal provision because they take a couple of orientation classes when they go to an internship during summer vacation and when they graduate.³⁶ All told, workers tend to be most insistent about the signing of labor contracts with employers, compared to the other legal provisions.

³³ Interviews with workers in June 2010 and in July 2011

³⁴ Double wage for any time served without written contract (Articles 10 and 82 of Labor Contract Law)

³⁵ Interestingly, some workers interviewed said that they would go to a labor bureau immediately, while others said that they would wait until they quit and go to the bureau later.

³⁶ Interview with workers in May 2011

3) Local government

Multiple informants (including local government officials, HR managers, labor lawyers, workers, HR consultants, and labor arbitrators) confirmed that, despite their pro-business policy, local governments are keen on “written labor contracts.” There are several factors, internal and external, that have pushed local pro-business governments towards strong support for written contracts. First and foremost, the central and provincial governments have put continuous pressure on local governments to pay more attention to the regularization of labor contracts (Chou 2011, ILO 2010). Chinese leadership is well aware that a written labor contract is critical for establishing a sound labor market. Using this rationale, provincial governments carry out a special propaganda campaign annually (usually through the media and semi-government societal organizations including the women’s federation and youth federation). Moreover, formerly silent local actors (e.g. media, lawyers, labor trade unions, migrant NGOs) now unintentionally expose local governments’ inaction when these societal actors publicize that a large proportion of workers work without written labor contracts.

Internally, local governments have reasons of their own to strongly support the regularization of labor contracts. The capacity of the current inspection system is so restricted that local inspectors are motivated to focus on only a small number of legal provisions. For local inspectorates, checking written labor contracts in factories is the easiest and most time-efficient way to reach compliance goals, from a cost-benefit analysis.³⁷ Furthermore, local government officials have learned by experience that for workers to sign written contracts helps solve problems smoothly when issues occur, given that most destructive protests tend to be caused by the absence of written contracts (proof of an employment relationship) and workers’ subsequent difficulty in

³⁷ Interview with local inspector in June 2010

receiving compensation from, for instance, a layoff or work injury.³⁸

It is of note that the local government's keen attention alone does not fully account for rapidly enhanced compliance with written contracts, because the employment protection system in China is a totally complaint-based one ("no complaints, no enforcement"). Therefore, without bottom-up pressures from workers and labor intermediaries, the degree of compliance would have been lower and the process of enhancement much slower.

4) Employer

Overall, employers in China have strongly preferred not to sign a written labor contract with workers because the lack of a formal relationship allowed employers to keep labor costs down (e.g. by evading social insurance fees and/or by avoiding legal responsibility for worker injury) and to enjoy labor flexibility (e.g. by easily replacing workers upon market circumstances). This tendency was more salient in labor-intensive small or medium factories. Although written labor contract was required of employers in the past as well, the reality was that local governments rarely conducted inspection and, even when caught, employers could easily solve the problem covertly under a dyadic enforcement relationship between local government and employer (Lee 2007). For these reasons, a small proportion of workers could sign a written labor contract with their employers. The government official data in 2002 showed that the rate of written labor contracts among Chinese workers was 20 percent or so.

However, recent institutional changes (in legal and societal contexts) are imposing a huge financial and operational burden on employers, especially on small-size labor-intensive factories.³⁹ The current situation is that stricter penalties are clearly specified and the local labor

³⁸ Interview with local government official in May 2010

³⁹ The Labor Contract Law (2008) requires employers to sign open-term contracts with an employee who has worked for 10 years or more, and with an employee who has had two continuous fixed-term contracts,

agencies make it clear that complaints received must be investigated. As local government becomes more attuned to this provision, a violating employer cannot easily negotiate penalties with authorities as they did in the past. More importantly, most young workers are well aware that they can directly receive fairly high financial returns from a violating employer (e.g. double wages for any time served without a written contract), and also that labor intermediaries, strong supporters of the written contract requirement, add to violation costs on the part of employers by either directly challenging a violating employer or indirectly facilitating workers' bottom-up legal activism or by pushing local agencies toward stricter enforcement. One HR manager interviewed revealed that a labor official warned, "as long as no complaint is received, it is fine. We don't go inspect. But, when a worker complaint is received, we definitely go inspect. The law will be retroactively applied."⁴⁰ Therefore, once a worker's grievance is filed with local agencies, the designated employer is highly likely to face a weighted retroactive inspection. Interestingly, I found that some employers agree to sign written contracts with workers in order to experience some relief from local governments' enforcement of other laws such as environmental and tax laws.⁴¹ The head officials in local governments have the discretion to adjust local regulations, enforcing one law strictly, while tolerating the violation of another. Strategically, when employers are asked to take some regulations seriously, they do so expecting some benefit down the road.

In summary, despite a huge financial and operational burden, employers are motivated to sign written contracts with employee in the face of heightened bottom-up pressures by workers and

if an employee requests. Otherwise, an employer shall provide double the normal severance payment (Article 14). Media reports indicated that employers in China came to face 30 percent or more additional financial costs due to these provisions.

⁴⁰ Interview with HR manager in 2010

⁴¹ Interviews with general managers in 2010

labor intermediaries, as well as local governments' stricter top-down pressure.

Overall, the union of these four actors' interests toward compliance with written labor contracts forms a relatively higher compliance and rapid institutionalization of this practice.

Legal Provision 2 (Social insurance payment): A diverse spectrum of interest

Overall, my findings indicate that employers respond variously to social insurance payment provisions. I suggest that this results from a diverse spectrum of interest within actors and across actors.

1) Labor social intermediaries

Regarding social insurance, I found that labor intermediaries remained as “sympathetic instructors.” In contrast to their pro-labor attitude and quick response to grievances regarding written labor contracts, labor intermediaries take an ambivalent attitude towards social insurance cases and process them slowly. Their typical response is “to take time and have a look at it.” Most local arbitrators tend to take only “outright non-purchase of social insurance for an entire payroll” seriously. In most other cases, they try to encourage workers to make a deal with their employers. Local arbitrators tend to accept only cases for which workers submit precise and complete documentation. Similarly, local lawyers will not take social insurance cases unless they involve a huge amount of compensation from work injury. Local media also pay less attention to these low-profile cases than to written labor contract requirements.

This is not to say these intermediaries do not support the central government's social insurance reform and social policies. They are well aware that this reform will benefit workers. However, sitting between ideal government policy and local economic consideration, their more realistic tack is to pursue social policy reform gradually, urging employers to purchase social insurance

for workers as a way to protect themselves from negative economic consequences. Likewise, they encourage workers to make a deal with employers rather than resorting to legal action. Local media often cover and encourage best “win-win practices” between employer and workers, for instance, by emphasizing that the employer’s purchase of social insurance for employees can enhance worker satisfaction and their commitment to the company. It should be noted that, unlike their strong set of moral values regarding written labor contracts, labor intermediaries interviewed commonly employed words or phrases reflecting the current Chinese situation. Common responses included⁴²: “That is the reality of our country”, “In principle ~, however, the reality is ~”, “The size of our country is too huge to implement a certain policy. It may take long time”, “This social policy reform is not a short-term goal, but rather a long-term goal.”

In summary, the ambivalent attitude and arbitrary application of their criteria on the part of labor intermediaries causes a huge internal variation among labor intermediaries, thereby giving inconsistent weak signals to other actors such as local governments, workers, and employers.

2) Workers

I found that a large number of workers interviewed thought that their pension contribution of 10 percent of their wages was excessive, given their meager incomes. They would rather have this money in hand to meet their daily living costs. In particular, workers in their twenties who have been contributing towards their pension for only a short time would rather have the cash. Moreover, high mobility makes workers feel less interested in social insurance. Until very recently, migrant workers could not transfer their pension accounts to their new place of work, or even to their place of birth, thus limiting the system’s utility for them. Although a new law was enacted in 2011, they are still doubtful about transferring their pension accounts to their new

⁴² This finding is based on my interviews with about 60 labor intermediaries.

places or hometowns. These workers accordingly would simply cash in their contribution when returning to their hometown.

Recently, however, changes are underway among workers. As more and more workers are exposed to relevant stories about the benefits of social insurance (e.g. regarding retirement or worker injury compensation), they are choosing to ask their employer to buy social insurance for them. I found that this tendency was more salient in the category of older workers and/or workers who stayed in urban areas for a relatively long period.

One emerging situation is that complaints to the labor bureau about employer violations in this area have become more and more frequent. I noticed that workers did so from two motivations. One case is a real preference for social insurance. That is, filing workers ask local agencies to force the employer to buy insurance for them. The other case is when workers take advantage of this provision when they leave a factory. That is, noticing that they are still eligible to receive severance pay equal to one month's wage if they resign by reason of employer violation (e.g. the employer's non-purchase of social insurance), more and more workers report employers' violations to labor agencies.

One important feature to note from a worker's standpoint is that labor intermediaries, whom an aggrieved worker might first come to encounter for social insurance grievances, are not as enthusiastic and sincere regarding social insurance issues as they are to written labor contracts. They instead suggest that an aggrieved worker make a deal with an employer rather than filing a case with the state grievance vehicles. This tendency is more salient in cases of mutually agreed upon non-purchase of social insurance. One worker interviewed complained that the labor lawyer he contacted would no longer listen to his case when he talked about social insurance

issues.⁴³ As such, it appears that, although the labor agencies' complaint-based protection system is still working, when it comes to social insurance issues, an aggrieved worker cannot expect the extra help from labor intermediaries that they show regarding written labor contract issues.

3) Local government

The central government has recently made noticeable efforts to build up the standardized social insurance system in China. To ensure enforcement, the newly revised regulation in 2011 has significantly increased the penalties for employer violations. As in the written labor contract requirement, complaint-based employment protection is still working in social insurance issues on the local level. However, from multiple interviews with government officials, I found that local government does not exert unified, consistent pressure on employers regarding social insurance. I noticed a huge variation among labor officials as well as across departments. While some labor officials strongly support the recently enacted social insurance regulation, others openly feel sympathetic to employers who face greater financial burden due to the new regulation. The officials who are in charge of investment attraction are more worried about the sharp increase in production costs and possibility of bankruptcy, while labor officials largely pay more heed to how to effectively collect social insurance payments.

Interestingly, one notable legacy to this provision was an agreed-upon condition by local governments when attracting investments initially. Local governments have made use of lax enforcement of social insurance payment as an incentive to attract investment, along with taxes, utilities, and administration fees. As the new regulations attempt to break previous verbal agreements between employer and local government, local employers are rightfully (in their

⁴³ Interview with worker in July 2010

sense) resisting. Another point is that all social insurance products are not considered equally important to local government, which has strong incentive to register workers for pension plans, but not so much for insurance plans. Until recently, several institutional flaws rendered it difficult to transfer migrant workers' pensions to other workplaces or to their hometowns, which were mostly in other provinces. Accordingly, most workers cashed in their own contribution upon leaving, with the employer contribution staying with the local government. Thus, pension insurance was considered a major net income for local government (China Labor Bulletin 2009). On the other hand, health insurance carried different implications for local governments. Once the migrant population had insurance coverage, local governments then needed to reallocate a portion of urban medical resources and funds to provide medical service to them, causing a net loss of revenue regarding insurance (Wu 2008).

Given all these issues, local governments tend to take ambivalent attitude and do not give a unified strong signal to local employers. In many cases, they remain as a passive enforcer, addressing this issue when they receive a worker grievance.

4) Employers

Due to the financial burden associated with social insurance (a contribution of an additional 30 percent of worker wage), employers have traditionally tried to find a way around this legal provision. In the past, employers made clever use of the fact that local governments sympathized with them, given tenuous local economic circumstances. They also knew that migrant workers were not aware of or not interested in the availability of social insurance.

However, recent institutional changes have significantly increased employer's uncertainty and concerns. Although many local officials are still sympathetic to employers, local agencies cannot ignore a bottom-up case by an aggrieved worker. Once a case is received, it must be addressed.

Since this provision is retroactively applied and, additionally, a fine is issued, it will surely impose a huge financial burden on a detected employer. As such, a record amount of social insurance payment, which was retroactively applied, is often reported in the media. Another concern is about the risk of worker injury. If employers do not carry social insurance, they will be held fully responsible for all medical expenses and compensatory expenses, as well as possible fines. Moreover, the new generation of workers would not easily give up their work injury compensation, contrary to their parents' generation, which was forced to negotiate compensation with management when work injuries occurred. The recent series of coal mine accidents have added to employer concerns about lack of social insurance, as the central and provincial governments have become even more attentive to work safety issues.

While employers have fewer concerns about this legal provision than about written labor contracts, they cannot always ignore it because there exists a huge variation in actors' attitudes to social insurance. This diversified, weak signal sometimes tends to give a much harder time to employers, because it is very hard to predict the objective violation costs. In an extreme case, as the current system is a totally complaint-based one, even an employer who does not buy social insurance for workers at all can be fine as long as neither an employee nor a third party (e.g. NGO, media, labor lawyers etc.) raises an issue. Similarly, due to the unpredictable risk, I noticed that employers whose factories cover the five bundles of social insurance for 80 percent of workers often worry more about their practices than employers whose insurance coverage for workers is less than 30 percent of workers in the factory.

I suggest that this kind of vague and ambivalent signal causes symbolic or creative responses of employers to the social insurance provision, testing the line between legal and illegal. An emerging way to deal with non-purchase of social insurance is to cover "uncovered" workers

with commercial insurances. Employers purchase commercial insurance either under the company name or under specific workers' names. This way at least, when faced with work-related injuries, the company can receive some amount of compensation.

When they have to determine the degree of sanction, labor intermediaries tend to extenuate this illegality, because it is at least better than outright non-purchase of social insurance. Local journalists, labor lawyers, labor consultants, labor arbitrators consider this practice to be temporary solutions and tend to discourage workers from filing a case for this reason. It is important to note that employers make sure that those workers not wishing to participate in the mandatory social insurance system confirm their intention via consent form or finger signature to respond to an uncovered worker's future grievance filing. Although it does not have a legal effect, labor intermediaries make use of this agreement to their advantage when they justify the local adaptation of this legal provision, and workers often have a misunderstanding of its effect, thereby giving up voicing their grievances regarding social insurance payment.

Legal Provision 3 (Overtime practices): Interest convergence towards non-compliance

Overall, the findings on overtime show that all companies in this study violate OT hour provisions. A majority of factories effectively require workers to put in over 100 hours of overtime per month, and more than half the companies do not give workers one day off per week. Below, I detail each actor's unified, firm stance against OT hour regulation and how employers make sense of this signal.

1) Labor intermediaries

It is notable that, while there is wide internal variation in their approach to the social insurance issue, labor intermediaries openly simply ignore OT hour provisions. I found that, regarding

overtime regulations, labor intermediaries act as “indifferent onlookers.” They do not deal with complaints or grievances according to the laws on the book. While they are sympathetic and responsive to grievances about the absence of written labor contracts, labor intermediaries very often either ignore or thwart workers’ grievances about overtime. Labor arbitrators largely would not listen to OT hour grievances. Similarly, local media do not cover OT issues unless excessive overtime involves child labor. Labor lawyers, well aware that the OT issue is hard to provide relevant evidence for and is time-consuming, are reluctant to take OT cases. HR/ labor consultants also do not take this issue seriously and thus do not spend much of their consulting time on it.

It should be noted that, when asked about their thoughts concerning OT hour regulation, a large proportion of labor intermediaries tended to link recent OT controversies to the weak mentality of young migrant workers.⁴⁴ Common complaints heard among these intermediaries are that young people these days do not want to “eat bitterness,” pointing out young workers’ unwillingness to do “hard work.” Another lawyer points out that, “In the 1980s and 1990s, migrant workers were very hard-working and willingly stayed for over 12 hours a day at the factory, but today our daughters and sons don’t know what hardship is.” These expressions are in sharp contrast with those heard in the case of written labor contracts and social insurance issues. Interestingly, labor intermediaries creatively reinterpret this nationally-imposed OT hour provision and confer new meaning to it. They effectively set the local norms for overtime regulations. Now, overtime work is considered acceptable among labor intermediaries in the special economic zones (SEZ) where I conducted research, as long as the correct premium is paid and there exists a consent form or worker signature. If these conditions are met, labor

⁴⁴ This finding is based on my interviews with about 60 labor intermediaries.

intermediaries tend to refuse any grievances. These intermediaries appear to have a belief that their interpretation of the rule is more realistic and can accommodate national labor law as well as local circumstances. They are certain that they are doing their best to satisfy both aims of economic development and worker protection.

It is of note that this new definition is well received by local government, employers, and workers in a situation where no one knows what acceptable standards are, due to a huge gap between law and reality. However, a notable dark side of this local adaptation is that some young workers, who initially had felt uncomfortable and complained about long-hour work time, came to internalize this practice gradually under this local atmosphere, where most relevant third parties (e.g. watchdog organizations or other outside stakeholders) remained silent about OT violation.⁴⁵ In this sense, labor intermediaries contribute to delegitimizing the legal provision and institutionalizing non-compliance of the OT hour provision.

2) Workers

I found that financial premiums are a key factor in workers' preference for longer work hours, and workers are effectively forced to do over 100 hours of overtime just to meet monthly living expenses. The general situation is as follows: In most factories in Guangdong Province, minimum wage (or slightly above) is used to set workers' base wage. The problem is that Guangdong's minimum wage is far below the average local wage and inadequate to cover basic needs. It is true that their base wage (or minimum wage) is approximately half of the overtime premium. To be specific, the average wage for production workers is linked to the local minimum wage (700-900 RMB) and the overtime premium (1400-1700 RMB) is calculated and based upon this minimum wage. If a worker logs in over 100 hours of overtime in a month (e.g.,

⁴⁵ My interviews with identical workers in July 2010 and June 2011

3 hours of overtime on weekdays, plus 10 hours of overtime on Saturdays, with Sundays off), her monthly income can amount to 2000-2500 RMB (\$ 254-367). If this worker did not work overtime, her total income would drop dramatically (700-900 RMB, \$102-132). Therefore, workers have no choice but to work excessive overtime.

I also found that the physical environment surrounding workers contributes to excessive overtime. Workers typically live in dormitories directly adjacent to the factory. The problem is that the factory is generally located in an economic development zone (*kai-fa-qu* in Chinese), which is isolated from downtown or leisure facilities. Transportation is rarely accessible and walking alone may be dangerous from late afternoon on. As a result, migrant workers, who have left their families and friends behind in their hometowns, have almost nothing to do other than to work overtime and earn more money. Although not entirely satisfactory, this situation causes workers to gradually justify overtime work, convincing themselves that the extra income from overtime is the most practical choice at the moment. Accordingly, most factories can easily get workers to sign consent forms by which they agree to work extreme overtime. It is important to note that when an aggrieved worker seriously considers filing a grievance, the previously signed consent form tends to act as a big psychological obstacle for her willingness to take real action for filing or reporting.

In summary, it appears at a glance that workers prefer to do overtime work. However, on closer inspection, it can be seen that workers have far less discretion in their decision to do overtime work (compared to written contract and social insurance issues) and are forced into it, and that they justify the overtime practice themselves, given the low base wage and disadvantageous physical environment. I call it “forced preference for excessive overtime work.” It is notable that a growing number of the new generation of workers resist excessive overtime and keep reporting

and/or filing their complaints to relevant state agencies despite an unfriendly local atmosphere and little help from local labor intermediaries. As a formally received complaint must be addressed, a local department cannot easily ignore a worker's bottom-up pressure. A relevant case is Factory 4 in my sample, which paid 49,000 RMB after being inspected for OT hour practices following one worker's grievance filing with the local labor department.

3) Local government

Local governments do not want to be accused of inaction or lax enforcement, as upper-level government is paying extra attention to labor unrest these days. Like written labor contract and social insurance payment, labor agencies still make sure that a case filed must be addressed. Currently, given the increasing number of worker suicides and protests, labor officials periodically warn employers that "excessive overtime for child labor" or "excessive OT-related worker suicide" will be heavily sanctioned, especially when these issues are publicly known via the media or internet.

However, it appears that local officials do not see OT violation as a problem, and their attitude has not changed over time.⁴⁶ One local official expressed it in this way, "OT hour regulation is absurd."⁴⁷ Another local official complained, "The central government officials are ignorant of local conditions because they never leave their offices."⁴⁸ Multiple officials commonly predicted that OT hour restriction was only an ideal to be realized one hundred years from now or perhaps never. Local governments understand well the limits on their community's economic development. They know that employers, especially at labor intensive companies, cannot easily expand their facilities and, instead, they make the most of their current facilities by employing a

⁴⁶ Interview with local officials in June 2010 and June 2011

⁴⁷ Interview with local official in June 2011.

⁴⁸ Interview with local official in June 2010.

large amount of overtime. Overall, it appears that local officials very reluctantly enforce the OT hour regulation only when a complaint is received.

4) Employers

Employers openly dismiss the OT regulations. There is consensus among employers that compliance with the 36 hour restriction is not possible. I found that most HR informants always make the excuse that workers themselves, as the main beneficiaries, do not want this law enforced. Similarly, employers claim that if they comply with it, they will have difficulty retaining workers. It is notable, however, that no employer interviewed would consider taking the high road, a scenario that provides workers a decent living wage eliminating or lessening the need to work excessive amounts of overtime.

It appears that employer preference for extreme overtime is based on their production systems. Most employers want to minimize their production capabilities as much as possible since physical size in labor-intensive industries directly affects administration costs. To make matters worse, the new labor laws have significantly increased the financial burden of retaining regular workers. Employers therefore have sufficient motivation to make the most of current labor by employing more overtime. The immediacy of filling orders from the buyer is also responsible for excessive overtime. Due to the very competitive market environment, employers have no choice but to meet all and any orders from buyers. When faced with an out-of-capability order, employers first have dinner with local officials to smooth out possible obstacles and treat workers more generously, to ensure satisfactory completion of the order.⁴⁹ Under these circumstances, employers consider the OT hour restrictions to be an extremely absurd and impractical “central government” policy, and continue to rely on excessive overtime production.

⁴⁹ Interview with general managers in April 2010.

However, as workers' grievance filing has increased in recent years, the emerging practice is that management lets workers sign a consent form as evidence of their "voluntary excessive overtime."

In summary, in real life, the 36 hour restriction on overtime lacks local legitimacy among actors and, accordingly, this provision is thoroughly ignored by employers.

CONCLUSION

In this paper, I first presented how employers respond to three different legal provisions, and then explored what causes this variation. I offered a *pluralistic, pragmatic* framework of labor compliance in China, reflecting recent substantial institutional changes. My extended framework highlights the increasingly important roles of two actors: new generation of workers and labor social intermediaries, and emphasizes that these actors' differentiated interest in each legal provision moderates an employer's compliance.

I argue that the top-down deterrence approach does not fully account for the wide variation in compliance or catch the ground-level dynamics of how nationally imposed labor laws are enforced and complied with Chinese workplaces on the local level. I seek to fit the deterrence approach into the Chinese context, given the increasingly powerful diverse bottom-up pressures, and underscore that two new actors significantly increase the perceptive violation costs on the part of employers and, in turn, employers respond to this new environment either by higher compliance or by adoption of new practices. I also emphasize that, as actors act differently upon their interests and circumstances, an employer's response to each provision varies accordingly. My study shows that the Chinese context does not fit well with the top-down deterrence approach, let alone with legal formalism, which emphasizes neutrality and consistency of

enforcement, and legal centralism, which emphasizes the critical impact of legal change. Instead, my study suggests that since labor laws are not a thoroughly exogenous, independent factor in the Chinese context, more attention needs to be paid to the details about how enforcement and compliance get reshaped by multiple stakeholders.

My study contributes to current studies in four aspects. First, it provides a more nuanced understanding of today's Chinese workplaces by presenting a more variegated picture of compliance, in contrast to much of the literature which presents a monolithic picture of widespread abuse of labor standards in China. Second, my research contributes to extending the dyadic "local government-employer" framework towards a more pluralistic, pragmatic one of diverse actors, reflecting the two emerging actors and differing interests across legal provisions. Finally, from a policy implication standpoint, my research adds to the ongoing question of how to improve labor standards by presenting the notion that the labor agency is not the sole enforcer, but that other bottom-up pressures can significantly influence a firm's response to labor regulations.

My research has a couple of limitations, however. First, it focuses on one industry (electronics) in one special economic zone (SEZ) in China and therefore, it may be difficult to make a generalization to all factories in China from my findings. However, because local, in-depth reports such as this one are key to developing a better understanding of labor law enforcement and compliance, I believe that my study provides a starting point for further research. Second, my study has a limitation to examine the changes of legal compliance. Therefore, we need to closely follow how labor compliance evolves over time in these three legal provisions. Related to this, as my study is confined to three legal provisions, possible future research would be comparing compliance across diverse labor legal provisions.

APPENDIX

Table 2: pluralistic, pragmatic approach to labor law compliance in China

Legal provision	Attitude and interest of each actor to each legal provision			Interest convergence of three actors	(Result) Employer's response
	Labor intermediaries	Local government	workers		
Written labor contract	Strong interest (unified, consistent)	Strong interest (unified, consistent) active “reactive” enforcement	Strong interest (unified, consistent) Possess high level knowledge	Strong convergence towards compliance	Heightened compliance and rapid institutionalization
Social insurance payment	Vague, ambivalent attitude Huge internal variation	Vague, ambivalent attitude Huge internal variation Not unified, consistent signal	Vague, ambivalent attitude Huge internal variation Possess middle-level knowledge, Some workers are ignorant of social insurance	Vague, ambivalent attitude Huge internal variation	Gradual enhancement Symbolic and creative “grey” responses
OT hours	Strongly critical Create alternative interpretation	Strongly critical Passive “reactive” enforcement	Strongly critical (in some sense, forced non-compliance) Ignorance	Strong convergence towards non-compliance Lack of local legitimacy	Thorough ignorance Compliance is more affected by other factors

Table 3: Major provisions of Labor Contract Law

Legal provision	Contents
Articles 10 and 82	Employment contracts shall be concluded within one month after the employer starts using the employee. If not, they shall pay a double payment to its employees.
Article 14	If the employer fails to sign a written contract with an employee after one year actual employment, the employer shall have an open contract.
Article 16	Employees are entitled to a copy of their employment contract.

Table 4: Major provisions regarding social insurance

Legal provisions	Contents
Article 70 Labor Law	Social insurance systems provide laborers with assistance and compensation in the events of work injury, unemployment, illness, maternity and old age.
Article 72 Labor Law	Employers and laborers shall participate in social insurance programs.
Article 17 Labor Contract Law	All contracts include employers' insurance commitments.

Table 5: Social insurance coverage of workers in 20 factories (2010-2011)

20 factories (longitudinal)	2010	2011
Social insurance rate	60.0%	62.7%
Covered workers (#)	16765	16625
All workers (#) in sampled factories	27730	26503
Factory (#) – same factories	20	20

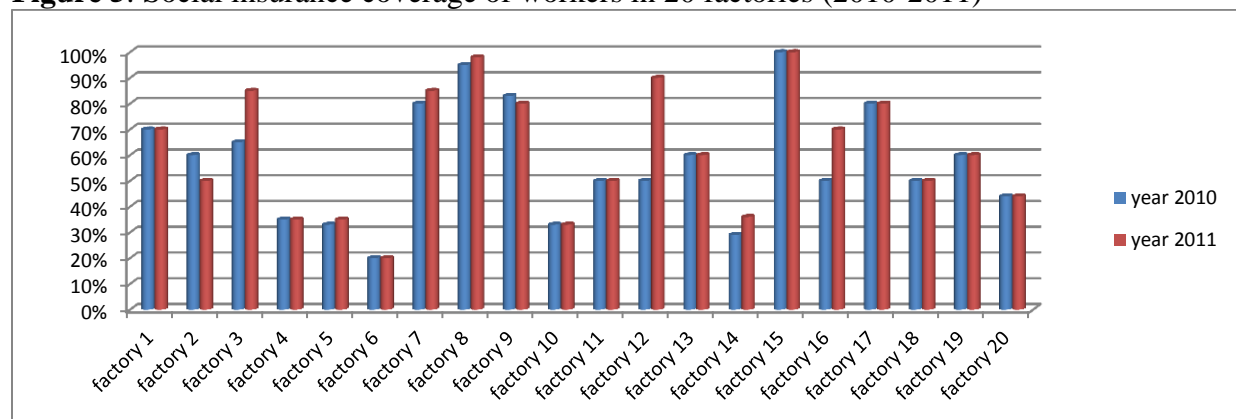
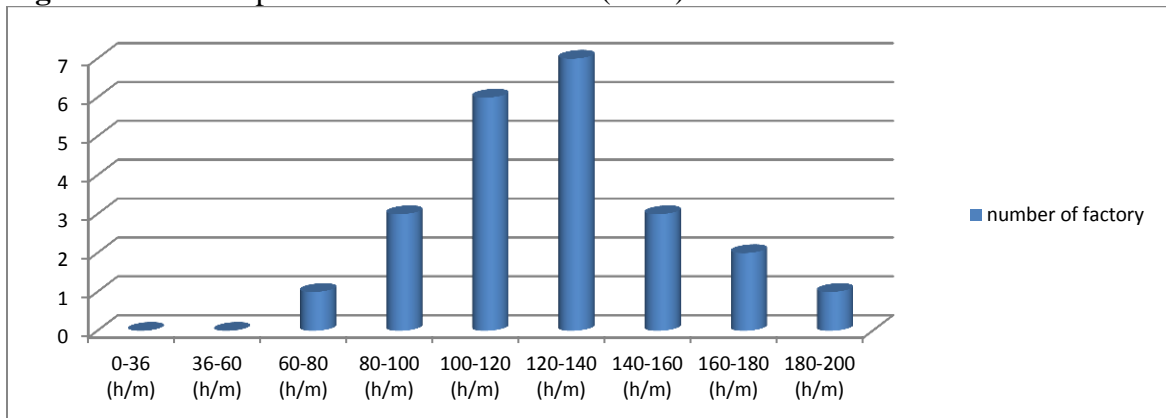
Figure 5: Social insurance coverage of workers in 20 factories (2010-2011)

Table 6: Major provisions regarding overtime practices

Legal provisions	Contents
Article 36 in Labor Law	Workers shall not work more than 8 hours per day, for a total of 44 hours per week.
Article 38 in Labor Law	Workers should be given at least one rest day per week.
Article 41 in Labor Law	Overtime must be voluntary and can amount to no more than 3 hours/day or 36 hours/month.
OT premiums in Labor Law	Employer should pay 150% of the normal rate as overtime compensation during weekdays, 200% on Saturday or Sunday, and 300% on statutory holidays.
*MNC code of conducts (e.g. NIKE)	Excessive OT is defined as any working hours in excess of 60 hours a week.

Figure 6: OT hour per month across factories (2011)



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CHAPTER 4

DIVERSIFIED, STRENGTHENED LABOR LAW ENFORCEMENT IN CHINA: THE EMERGING ROLE OF LABOR SOCIAL INTERMEDIARIES

In the past, employers in China enjoyed a great amount of flexibility and autonomy in their HR/labor policies (Gallagher 2004, Lee 2002). Management of workforce was easy; labor contracts were renewed annually in accordance with market conditions and, with the exception of certain core employees, workers were replaced on a regular basis to avoid the additional labor costs that long tenure might entail. More importantly, most employers blatantly ignored labor regulations. There is widespread evidence that many workplaces acted illegally by failing to provide workers with social insurances, demanding excessive overtime, and engaging in high-risk practices (e.g., Chan 2001, Lee 2002, Pun 2005).

On the other hand, almost all managers and/or HR managers I interviewed for this study in recent years expressed serious concerns about the new labor environment and the potential legal risks associated with their labor practices. Some factories I visited had recently revamped their human resources and labor practices “in order to keep legal risks in check.” I also noticed that many employers were seeking the advice of outside labor professionals such as labor lawyers and labor/HR consultants.

“Why these changes have taken place” is puzzling, although the few media reports and academic studies on the subject tend to assume that a stricter regime of state inspection and/or heavier penalties (e.g., under the Labor Contract Law 2008) have contributed to enhanced compliance. However, I argue that this kind of legal-oriented approach cannot explain the dynamics of the Chinese workplace today. Instead, I seek the reason for these changes in the transformation of

the regime of labor regulation, and highlight that various labor-related social intermediaries in the new regime are playing an increasingly important role in raising employers' uncertainty and concerns. Specifically, I distinguish the permissive labor regulation regime of the past from the current responsive regime, and highlight that, while state agencies were the only weak enforcers in the past, now multiple actors actively engage in labor law enforcement and compliance. Based on extensive field research into various social intermediaries as well as interviews with workers and employers, I demonstrate that this heightened pressure from intermediaries has substantially increased employers' concerns and uncertainty regarding the legality of their traditional workplace practices, thereby pushing them to adhere to standards.

Specifically, I identify three mechanisms by which these social intermediaries (specifically, the local media, regional union legal aid centers, university legal clinics, labor NGOs, lawyers, “barefoot lawyers”, and online social networks) engage in enforcement and compliance: 1) strengthening the formal state enforcement, 2) facilitating bottom-up enforcement, and 3) arousing public attention and cultivating local legal environment by directly challenging problematic employers regarding their violations of labor standards. In essence, by identifying an emerging Chinese phenomenon—strong societal pressures exerted on employers by diverse social intermediaries – I seek to contribute to literatures on regulations, labor law enforcement, and Chinese labor studies. The remainder of this paper is arranged as follows. In the next section, I describe the framework (permissive versus responsive regime of labor regulations) that will enable to explain why employers' concerns about labor practices have been heightened and labor law compliance has been enhanced in China. Then, I provide detailed explanations of the various social intermediaries and their roles, emphasizing that these intermediaries are key actors in the current responsive regime. Finally, I summarize this research and discuss its theoretical and

practical implications, as well as its contributions and limitations.

THE PERMISSIVE REGIME OF LABOR REGULATION

The permissive regime of labor regulation (hereafter, permissive regime), a term which I borrow from Lee (2002), refers to the way in which labor law enforcement and compliance is seriously compromised by local interests whose priority is economic development. The core of the permissive regime is that the local government is virtually the sole enforcer of labor regulation, but this sole enforcer rarely exercises its authority because local government puts economic development far ahead of labor law enforcement.⁵⁰ Therefore, by “permissive”, I mean that the regime is *permissive* toward employers who either directly violate labor regulations or continue to engage in illegal labor practices. I link this permissive regime to the China’s past period (1980s, 1990s, and early 2000s), when law enforcement at the local level was distorted by local government’s interest to attract firm investment and continue economic development. In these circumstances, employers had few concerns regarding labor laws and had very little motivation to comply with them. Below, I detail the direct as well as indirect processes through which labor laws were insufficiently enforced under this “permissive regime” of labor regulation in China.

1) Formal, direct enforcement

Under the permissive regime, the local government’s labor department dealt with most labor issues and acted as the sole enforcer of labor regulations. In principle, labor officials could enforce labor laws and ensure employers’ compliance with labor regulations (Cooney 2007a, 2007b). In reality, however, local labor officials could not do so “according to the book” due to

⁵⁰ Lee (2007) indicates that the fiscal decentralization in China’s reform era has brought about strong financial incentives on the part of local governments and officials to work with employers and investors in violation of labor laws. Gallagher (2005) offers a similar account of local government, taking as an example the Dalian Economic Development Zone. She argues that “the government is part administrator and part chamber of commerce” (p. 86).

structural limitations. First and foremost, the local labor department was directly under the control of pro-business (or pro-development) local government (Chen 2007, CLB 2010). In addition, most labor departments in China suffered from lack of funding, staffing, and training (ILO 2010). Labor officials rarely went out on inspection tours. Even when complaints were filed, labor officials tended to limit sanctions to warning and “educating” employers, rather than punishing them. Only very rarely were real sanctions applied, when the local government had received firm directions from above or strong complaints from the public via negative media coverage. Overall, formal law enforcement was largely a matter of local government-employer negotiation, rather than one of adherence to legal provisions (Cooney 2007a, b).

2) Indirect, bottom-up enforcement:

The lessons from the literatures on regulation and labor standards (e.g., Seidman 2007, Rodriguez-Garavito 2005, Hirsch 2009) are that there are three possible indirect (or bottom-up) source of enforcement, namely, trade unions, “watchdog” actors in civil society, and workers who file their own grievances. These actors were largely absent from the permissive regime in China. Due to their structural limitations (their role as a transmission belt between workers and the state), trade unions could not act as worker representatives. At the local level, the trade union remained as a nominal committee or a second labor department. In addition, most grassroots unions were essentially null and void (Howell 2008, Chen 2009, Metcalf and Li 2005, Chen 2009).

Similarly, civil society was non-existent, very weak or, at best, a government’s puppet under the permissive regime. A few civil society organizations (or social organizations in Chinese term) existed but acted as tools of state control and enjoyed little autonomy (Foster 2002). In particular, labor was such a sensitive subject that there existed very little room for these actors to play a part.

Therefore, non-state actors could rarely influence employers' compliance with labor laws.

Workers themselves were also largely subservient to management, a very different situation from that pertaining today (Robert 2010). They were mostly less educated than today's workers and more economically-oriented. Their priority was to send what they earned back to their families and return to their hometowns when they saved up sufficient cash. Accordingly, they were largely forced to endure horrible working conditions and did not seek redress for their grievances (CLB 2010).

Equally important, the official grievance procedures for workers were inefficient and ineffective (Chen and Sil 2006, Friedman and Lee 2010, CLB 2007). Arbitration process took a long time to reach a verdict and, worse still, the decision was very often compromised by local circumstances concerning the "clientelistic relationship" between employers and local officials (Wank 1999). In addition, the arbitration fee of, on average, 100-200 RMB was a huge burden on workers whose monthly wage was less than 1,000 RMB. These complexities tended to discourage aggrieved workers from seeking redress via the state's official mechanisms, including labor bureaus, labor arbitration committees, and the courts.

All things considered, employers could enjoy full autonomy and discretion over the HR/ labor policies in the permissive regime. They did not experience serious amounts of pressure from local governments, let alone from other bottom-up actors, and did not feel any serious concerns in relation to their illegal labor practices. Below, I examine the current regime of labor regulation (the "responsive regime") which has replaced the previous "permissive regime" over the last decade.

THE RESPONSIVE REGIME OF LABOR REGULATION

The responsive regime of labor regulation (hereafter, the responsive regime) is one in which the

state seeks to be as *responsive* as possible to workers seeking redress for their grievances.⁵¹ In contrast to the generosity toward employers exercised by the state under the permissive regime, the state's interest under the responsive regime lies in how to resolve workers' complaints effectively in a timely manner using state-designed procedures. This responsive regime has emerged during the period since the early 2000s, when a series of pro-labor policies and laws came into effect and the state began offering strong encouragement to diverse societal "watchdog" actors to engage in "bottom-up" labor law enforcement. Therefore, under this regime, state agencies are not the only enforcers, but diverse societal actors (e.g. the media, local trade unions, lawyers, labor-related NGOs, non-governmental legal clinics, and online social networks) actively voice their opinions and take part in workers' grievance procedures in a variety of ways. Faced with more intense pressure from diverse societal NGOs, employers feel more uncertain and concerned about the legal risks they are taking and they are forced to rethink the legality of their traditional workplace practices, which were tolerated in the past in the name of economic development.

Before moving to the specifics of the responsive regime, it is necessary to examine what has brought about this regime change in recent years, particularly since the early 2000s. One major driving force for this change was the central government's concerns regarding the increase in labor unrest that accompanied the country's rapid economic development. Indeed, as the state withdrew from the direct administration and control of labor (via the *danwei* system), many workers became exposed to exploitation and poverty (Lee 1999, 2007). This prompted an increasing number of workers to take to the streets or to resort to extreme measures (e.g., the spate of worker suicides at Foxconn and the series of strikes at foreign factories in China, such as

⁵¹ To put it briefly, the major audience for labor policy has changed: from *employers* to *workers*.

Honda Motors). Thus, it has become critical that workers' complaints were handled in a timely and effective manner.

This is why the Chinese government became more responsive to workers' complaints. To this end, the government has made concerted efforts to address two major flaws in the traditional grievance procedure: those of *process* and *content*. First of all, it is now the rule that complaints must be investigated if they have been accepted and filed properly.⁵² As long as the worker satisfies the minimum reporting requirements, such as providing employer information and filing within the correct inspection boundaries, labor officials are obliged to complete the investigation of complaints within sixty days, or for more complicated cases, ninety days. Several officials I interviewed revealed that as labor unrest has become more serious in China, upper level governments are becoming increasingly reluctant to tolerate lack of action by labor officials.⁵³ Accordingly, compared to the past, labor officials now have little freedom to dismiss blatant and egregious violations by employers. Unlike political matters, violations of labor regulations are not seen by local courts as being sensitive issues. Nowadays, the courts process cases fairly and pass verdicts drawing on the relevant labor law (Jiang 2009, field interview May 2010).

Therefore, if there exists a clear violation by an employer, and a filing worker provides the necessary evidence (e.g., overtime hours log, proof of employment relationship), the judge has no choice but to produce a verdict based on the law. More importantly, in 2006 the courts lowered their fees. The fee for filing a case involving less than 10,000 RMB is 50 RMB fee and, that of cases involving more than 10,000 RMB is 2.5 percent of the amount at issue (Jiang 2009). Labor regulations have also become much clearer. Although the regulations existed previously,

⁵² Interview with labor officials and labor arbitrators in Guangdong and Jiangsu Provinces in 2010 and 2011.

⁵³ Ibid.

the legal provisions were ambiguous and vague. Now, the sanctions for various violations are determined based on relevant laws and regulations. Specifically, the Labor Arbitration and Mediation Law of 2008 streamlined the grievance procedures for workers. It extended the time limit for applications from sixty days to one year, shortened the time for conclusion of arbitration (45 days), and did away with the arbitration fee (which had previously been 100-200 RMB). In addition to clarifying regulations, more importantly, the new labor laws offer workers strong incentives to deal with employer violations through official channels such as the labor bureau, the labor arbitration committee, or the courts, by increasing the financial rewards that a filing worker can receive. Some of the examples are: provisions 10 and 82 of the Labor Contract Law mandate that an employer must enter into a written labor contract with a worker within thirty days. Failure to do so leads to a penalty of paying the worker double wages for any time served without a written contract. If an employee works for twelve months without a written contract, she is then entitled to sign a non-fixed-term contract. Provisions 46 and 47 stipulate that workers can voluntarily terminate their labor contract and still receive severance pay equal to one month's wages if they resign on account of the employer committing a violation, such as failure to purchase social insurance or overtime hours/wages violations.

These provisions are specific and binding, different from the Labor Law of 1994 which did not specify sanctions against employers or financial returns for aggrieved workers. At that time, the law merely stipulated that relevant officials should *encourage* employers to sign written contracts. When compared to other developing countries, this degree of tangible compensation and returns for aggrieved workers is quite remarkable.

With a similar rationale, the state strongly encourages various social intermediaries to engage in labor law enforcement and compliance, which is the focus of this paper and will be set out in

more detail later. As “input” actors who fill the void left by the state’s relaxed control of society (Nathan 2003) and as useful “watchdog” actors who monitor local-level abuse by employers and local agencies’ complacency, social intermediaries are allowed to aggressively engage in law enforcement and compliance in this otherwise repressive authoritarian country. Social intermediaries have a good understanding of their new opportunities and use their newly given authority to push employers to live up to the standards and, simultaneously, to induce or help workers to take various state-designed legal and semi-legal tools against their employers. They openly and loudly challenge unethical employers, relying on other sympathetic actors and pro-worker policies and legal provisions. They are keenly aware that unlawful workplace practices are one of the few issues that they can tackle safely. Armed with state slogans such as “building a harmonious society”, social intermediaries actively expose employer wrongdoings to the public and officialdom.⁵⁴ In the next section, I detail what the various social intermediaries are doing in the current responsive regime of labor regulation.

At this point, it is necessary to clarify what is meant by “reporting threat” in China. “Reporting threat” is more consequential than the “threat of litigation” in a western context. Although managers in western countries are concerned about the threat of litigation due to substantial payouts they have to make if the verdict of the court goes against them, such cases are not as frequent as they believe. This is mainly because of slow and complicated processes (Seeber and Lipsky 2006)⁵⁵. On the other hand, in China an aggrieved worker does not have to go through a

⁵⁴ Of course, these actors are well aware of their structural limitations as well. They reassure the authorities that they supplement the state’s function, rather than flout them. Mostly, they work within state guideline, making the most of state slogans to legitimize their activities.

⁵⁵ Seeber and Lipsky. 2006. The Ascendancy of Employment Arbitrators in US Employment Relations: A New Actor in the American System? *British Journal of Industrial Relations*, 44(4): 719-756. See also Samuel Estreicher. 2001. Saturns for Rickshaws: The Stakes in the Debate over Predispute Employment Arbitration Agreement. *Ohio State Journal on Dispute Resolution*, 16(3):559-570; Eisenberg

complicated process. As long as she completes the application form properly, either on paper or on-line, local agencies must begin the investigation process. As a result, the perceived uncertainty and risk for managers' doing business in China has been conspicuously increased in recent years.

WHAT DO SOCIAL INTERMEDIARIES DO IN CHINA?

In this section, I first review existing China studies on diverse social intermediaries involved in labor law enforcement and compliance. I particularly focus on recent changes of each social intermediary and their causes. Then, I point out that there is no systematic analysis of the distinctive mechanisms by which these intermediaries contribute to better enforcement and compliance in China, and analyze the reasons. Taking this point into account, I then provide a detailed account of three mechanisms by which each intermediary contributes to increasing employers' perceived risk and thus to motivating them towards labor law compliance.

Media

The media have shown dynamic changes during the reform era (Liebman 2005, Stockmann 2008, Gallagher and Stockmann 2008). Departing from their typical image as traditional bastions of official propaganda, the media have become one of the most active actors and also a valuable partner for other actors (Hassid 2008). The media are increasingly willing to cover labor officials' inaction and employer wrongdoing. Sensational and heavily moralistic coverage of exploited migrant workers and bad working conditions are very common today. Liebman (2005) suggests

and Hill. 2003. Employment Arbitration and Litigation : An Empirical Comparison, New York University, School of Law Public Law and Legal Theory Research Paper Series, Research Paper 65; Alex Colvin. 2008. Analyzing Employment Arbitration Outcomes: Using California Data Collection Requirements Dataset, Presented at Research Conference on Access to Civil Justice: Empirical Perspectives at New York University Law School, Nov. 14-15. 2008.

that “the media are the single most important and effective avenue” for citizen redress. Below, I examine why the media have become so active in covering labor issues.

Throughout the Chinese modern history, the media in China were one of the important backbones of the communist party, serving as a propaganda machine of China’s party-state (Chan 2002, Liebman 2005, Hassid 2008). All media organizations were funded by the state, staffed by government officials, and strictly directed by the party. As the party’s mouthpiece, their main functions were propaganda and mobilization. However, nowadays all labor-related stakeholders – labor officials, workers, employers, and social actors – take media coverage of labor issues seriously (Liebman 2005). To workers, newspapers, magazines, and television programs are a key information source. The media play the role of a window and conduit by which workers encounter and learn about relevant laws and regulations. Lee (2007) cites a migrant construction worker involved in a collective labor dispute in Shenzhen. “Since we started this struggle with the company, many workers have begun to read newspapers. Some even cut out labor dispute stories for circulation in the dormitory. The more we read these legal reports, the more we understand the legal issues involved in our own case” (p.172). Media exposure of labor issues negatively impacts local officials as well, let alone the targeted employer, because it inadvertently points up their failure or inaction to address local injustice. Another area deserving close attention is internet media (Kim 2010, Yu 2006). Nowadays, internet portals exercise significant discretion over which stories to highlight when placing certain articles on their site or news homepage (Liebman 2005). Local stories that might otherwise pass unheard receive national attention, as long as the news contains some interesting element. Thus, bad working conditions or abusive labor at a small factory can quickly become national news possibly resulting in a quick and severe inspection of the targeted facility.

Existing studies point to two structural factors responsible for these changes in media operation and influence: the state's media policy change and media commercialization. First, the media's active coverage of labor news originated from the state's new propaganda policy in the reform era (Liebman 2005, Stockmann 2008, Gallagher and Stockmann 2008). In this policy, the state directs that the media disseminate its populist slogans like "everyone is equal before the law", and "use the law as a weapon," in order to hold local officials and employers accountable. The goal of the central leadership is that, with more media coverage and encouragement, people will let off steam about corruption, inaction, injustice, and incompetence via the official grievance mechanisms, thus preventing complaints from later going to the streets. Accordingly, media reports of unresolved issues frequently result in intervention by upper level officials who demand resolution of such matters. These days, the state tends to allow some leeway in online media (e.g., discussion board, online chatting rooms, and blogs), as long as the state's online guidelines are observed. As a result, Chinese media now increasingly report even strikes, when those strikes relate to serious corruption and miserable exploitation.

Second, the *commercialization* of the media in China has greatly contributed to the increase in workplace news coverage (Gallagher and Stockmann 2008, Liebman 2005). Different from the past period when the state financed the media, the industry must now finance itself, mainly by increasing advertising or sales, thus creating a very competitive market environment. While China had a small number of media outlets in the early 1980s, the media market has exponentially expanded for the past 30 years. Now a variety of newspapers, magazines, radio and television programs play their roles in the media market. Currently in China, there are over 2,000 newspapers, 9000 magazines, 300 radio stations, and over 300 television stations.⁵⁶ As the

⁵⁶ <http://www.chinatoday.com/med/a.htm>

internet has become popular, most media companies have developed their websites. Under this competitive market environment, the media are forced to attract public attention. They have to continuously produce new styles and contents that can win over their competitors. To meet the needs and demands of a more savvy audience, reporters have started to cover topics previously absent from the Chinese media and are bringing wider range of popular grievances to light. It is important to note that this commercialization has led to *less* state control over media content, because the state is no longer the only financer. As long as the media comply with state-set guidelines, they are allowed discretion on what to report. This freedom has inspired more critical and in-depth reporting on workplace injustices. Specialist legal media such as Legal Daily now compete against a number of general mainstream media (e.g., newspapers, magazines, and television programs) which have constantly introduced an attractive or useful legal section in their programs or publications. The substantial increase in workplace stories, especially those with a sensational or moralistic tone such as coverage of horrible working conditions or the miserable life of female migrant workers can easily attract attention and simultaneously satisfy the state's desire to root out unharmonious behavior and inequality. In sum, commercialization fits together nicely with the state's new societal-level goals.

Labor-Related Social Organizations (and Individuals)

One of the surprising features in current Chinese labor arena is the existence of a variety of labor-related social organizations that engage in addressing worker grievances, including labor NGOs, university-affiliated legal aid centers, and public interest lawyers. It is of note that the government increasingly tolerates and encourages their activities. Recent studies identify academic legal aid institutes (Gallagher 2005, 2008, Woo et al. 2008), lawyers (Michelson 2006, 2008, Liebman 2005), labor or migrant worker NGOs (Lee and Shen 2011, Halegua 2008, Zhang

and Smith 2009, CLNT 2007, 2008, 2010, He 2009, Gadsden 2010), and women's NGOs (Pun 2005) as circumstantial partners in the cause.⁵⁷ Despite organizational differences, they share common ground in opportunity structure, structural limitations, the creative strategies they employ, and their contributions to better law enforcement and compliance. The mushrooming of these organizations in China can be attributed mainly to the poor functioning of workplace trade unions. According to Che et al. (2004), only 1.9 percent of 582 migrant workers who suffered severe work injuries reported that they received attentions from workplace trade unions, even less than from the government (4.5 percent). Labor-related social organizations, weak as they are, fill the gap left by even weaker workplace unions, by manning hotlines, providing legal consultation, helping to collect evidence, accompanying clients to various bureaus, and representing workers in the courts. The jobs of these various intermediaries are not mutually exclusive, but often interconnected. Therefore, it often becomes hard to tell one from another. For instance, an young activist lawyer does a part-time job for free at a legal aid venue, or a labor NGO activists may enroll in classes at a local university and work with lawyers and law professors there. It is often seen that an NGO leader is also a lawyer. Next, I detail how individual labor-related social organizations have engaged in various labor issues.

1) Labor NGOs

Compared to grassroots NGOs working in other areas (e.g., education, environment and health), labor NGOs have many limitations, mainly because the government is oversensitive to their potential for regime-level anti-movement such as the Solidarity movement in Poland (Saich 2000, Wilson 1990). Accordingly, studies on Chinese labor NGOs are not many and, if any, describe

⁵⁷ According to Gadsden (2010), there are 425,000 social organizations in China. But, this number includes all kinds of diverse organizations, clubs, and groups (e.g., arts groups, automobile clubs, retirement associations). A real NGOs such as women's rights groups, environmental groups, migrant workers' advocacy associations, or antidiscrimination groups – are far fewer, around one thousand.

these NGOs as a second government organization or a social organization with a very limited function. However, an increasing number of labor NGOs are playing important and diverse roles in addressing migrant worker concerns.⁵⁸ Their activities include: 1) raising rights awareness, 2) giving legal advice, 3) representing aggrieved workers in disputes, 4) explaining labor law, and 5) providing basic training in workplace injury prevention such as occupational health and safety. They also conduct cultural and recreation activities to help young migrant workers to enjoy their spare time more effectively. Above all, local governments see that NGOs are especially effective in solving social problems and thus have shown willingness to work with NGOs in providing services to migrants. These NGOs are considered to have a better understanding of migrants' lives and have on-the-ground knowledge and experience. NGOs also set forth new ideas and feasible solutions to address societal problems, such as calming local labor unrest. The central government has sent a positive signal to labor NGOs. Regulations on Legal Aid passed in 2003 stipulate that the state is responsible for legal aid and NGOs supplement what the state has already sponsored. In January 2010, the Finance Ministry announced that the government would create fifty million RMB to assist legal aid activities and that NGOs could apply for this fund (Gadsden 2010).

While becoming far more positive about labor NGOs, local governments maintain clear guidelines for their operations which must focus on helping migrant workers get settled in urban areas – something the local government urgently needs help with and is not politically sensitive. As long as migrant labor NGOs focus on such service-oriented activities, the local government

⁵⁸ The number of labor NGOs is controversial. Conservatively speaking, Lee and Shen (2011) indicates that there about 30 labor NGOs which are visible and active across China. Whereas, He (2009) shows that there are about 30 labor NGOs in Guangdong province including registered and unregistered ones, which means that the number of labor NGOs across China is far more than expected. He (2009) highlights that numerous recent studies reveal that local NGOs have emerged especially in Guangdong area since mid-1990s.

seems to step back and be quite tolerant and flexible. Some unregistered NGOs are allowed to operate openly while some labor NGOs enjoy some autonomy after registering as 'business entities.' They often receive compensation or service fee from local governments. For example, the leader of the Home of Fellow Peasants, a Beijing-based organization, was elected "Nationally Outstanding Young Migrant Worker" in May 2005, for his organization's positive role as a messenger between migrant workers and the local government. Similarly, in 2007, the mayor of Shenzhen city granted Little Bird a big bonus of 5000RMB in recognition of its voluntary service. However, once labor NGOs move from providing specific services to advocating and mobilizing collective action, local governments quickly move to shut down or repress them. There are many examples of this. The most notably case was in 2006 when two labor NGOs in Shenzhen were shut down for the reason of their "illegal case agent exercises" and also when the Shenzhen Migrant Worker Association was banned by local authorities (CLNT 2007). Given this potential reaction, NGO leaders avoid identifying themselves or their work in expressly political terms. They want to be viewed as service-oriented organization rather than their policy-advocacy or human rights organization. These organizations prefer to deal with clear, or non-controversial, legal elements such as the presence of written contract. Their most realistic tack in addressing worker grievances regarding employer wrongdoing is to help the worker follow proper channels and processes for seeking redress. Mr. Huang, director of Shenzhen Little Bird Hotline confirms this (He 2009):

"Our basic philosophy is to conciliate the conflicts, rather than to add to the tension. When migrants in trouble ask us for help, what we tell them first is 'pick up the weapon of the law to defend your legitimate rights, but don't use radical measures such as strikes, sit-ins, or petitions'. This is why the government doesn't perceive us as a threat."

More actively, most labor NGOs often visit relevant state agencies (e.g., labor/social insurance department) and show their willingness to take part in the local government's activities regarding

migrant workers. The Panyu Migrant Document Service Center organized various labor rights-related activities with the local trade union, women union, and youth league which are all “quasi-government” in essence. This strategy earned the center much credit with the local government.

2) University-affiliated Legal Aid Centers

A growing number of universities now have legal aid centers and several have funded and run legal aid clinics out of their law departments. Following the example of foreign clinics, particularly US ones, the university legal aid centers (or legal clinics) in China are staffed by law school student interns, the more well-known being those at Wuhan, Zhongshan, Beijing, and Nanjing Universities.⁵⁹ Legal assistance is conducted in various forms such as face-to-face, telephone, email, or online discussion board consultation, to help workers file reports with the labor bureau or arbitration committee. Clinic volunteers also may offer to represent workers in courts. Although university clinics initially began their advice with general area such as helping migrant workers, some clinics have later come to focus specifically on labor disputes. Though very similar to labor NGOs in objective, university legal aid centers have several advantages. First of all, they are quite stable (Lee 2000). If they do not make a serious mistake, such as challenging the local government, they are rarely interfered with. One intern whom I interviewed said, “We are well protected from local punitive sanctions due to *guanxi*, that is, the good relationship between local government and law school faculty.”⁶⁰ A second advantage is that the university reputation speeds up the dispute settling. Due to the *mianzi* (or face value) of a university, student interns can convince defendant employers to show some commitment to their cases rather than stand against a locally well-respected institution. At the same time, interns use

⁵⁹ Many university legal centers were originally established with funding and support from foreign NGOs, such as the Ford Foundation and Oxfam. Some of them still rely financially on foreign NGOs.

⁶⁰ Interview in Nanjing, June 2010.

their university reputation to request some relevant data and evidence from employers and local agencies that may otherwise ignore the request from non-governmental organizations or be reluctant to offer the information. Lastly, legal aid centers make full use of law school students (mostly, undergraduate law school students): most law schools in China require students to take at least one internship class in the relevant agencies. Given the reality in China (few agencies and institutions offering internship opportunities), legal aid centers are a law student's best chance at getting practical experience. However, despite their usefulness, university legal aid centers face operational constraints similar to those of labor NGOs. They rarely deal with government-related cases, such as the restructuring of local government-owned enterprises in order not to hurt relationship with the local government. Thus, helping aggrieved workers seek redress to clear-cut violations such as no written contract or no social insurance purchase is the most appropriate task university legal aid centers can take on, satisfying both the worker and local government agencies.

3) Lawyers: Firms and Individuals/ Legal and Illegal

It is estimated that there are now some 150,000 registered lawyers in China, and another 100,000 “barefoot lawyers” who work without formal certification (Lee 2008b). Today, more and more law firms and lawyers, both those registered and unregistered, engage in labor issues. Typically, labor cases are not economically attractive (Michelson 2006). Therefore, so-called “stable” or “established” law firms (or law offices) and lawyers tend to have shunned them favoring lucrative corporative and criminal cases. Even young inexperienced lawyers have lacked incentive to take labor cases which are time-consuming and have low fee potential. One noticeable feature in today's legal arena is that, bucking the trend, there are a growing number of law firms and “barefoot” lawyers specializing in labor (CLNT 2007, 2009, 2010). Capitalizing

on occasionally generous damage awards for workplace accidents, these lawyers offer legal services to migrants. One of well-known examples is Zhou Litai, who operates out of Shenzhen and Wuhan (CLNT 2007). Zhou became well known for his work in 1998 where he won the case for a workplace injury. Shai Oster in *Christian Science Monitor* reported that, “while the impact of his work is difficult to determine, some attorneys have noted that Zhou’s profitable work may encourage more attorneys to represent migrants in courts, or at least demonstrate to employers that courts are willing to enforce migrant rights and encourage employers to follow labor and migrant regulations” (Oster 2001).

On the other hand, another economic-oriented legal group taking on labor cases consists of non-legal professional or barefoot lawyers (CLNT 2007, 2009). They are generally self-trained but do not have license and affiliation. Some are retired civil officials and others are self-trained migrant workers. The reason for proliferation of these semi and non-legal agents is due to the high cost and limited practices of registered lawyers (CLNT 2009). Although officially barefoot lawyers are not permitted to charge fees for their services, the civil procedure law has allowed a citizen to act as a legal agent only on the condition that he or she does not levy a charge.

Recently, however, local government has begun to control these non-legal agents as they are considered to threaten social stability by inducing aggrieved workers to protest loudly and collectively in order to make a bigger impact (CLNT 2009, 2010).

Other than these economically-oriented legal actors, there are lawyers who willingly or forcefully take labor cases. The ‘willing’ includes a growing number of advocacy law firms, a good example of which is Beijing’s Tong Lihua law firm (Schiller 2009). With a combination of funding from foreign NGOs and Chinese government grants, an advocacy law firm provides three forms of direct legal services to migrants at no cost to their clients: outreach legal training

sessions, a nationwide migrant telephone hotline, and formal representation for migrants in legal proceedings. The ‘forceful’ group is those fulfilling a local pro bono requirement (Woo et al. 2007). Private, registered attorneys in Beijing are forced to satisfy such a requirement. Since 1993, Beijing has required lawyers to provide legal aid through city-sponsored legal aid offices. To meet these requirements, some lawyers represent migrants assigned to them by local city legal aid offices. Scholars and lawyers indicate that, regardless of process and result, assigning attorneys otherwise uninvolved with migrants to represent migrant-related cases tend to raise the legal community’s overall awareness of migrant issues (Liebman 2004).

Law firms and lawyers in China, both registered and unregistered, have limitations in addressing labor issues. They have received clear signal from government agencies not to cross the guideline (CHRD 2009). They must not represent socially sensitive issues. According to Christian Science Monitor, twenty lawyers who represented citizens in politically sensitive cases (such as the Falun Gong religion and Tibetan protesters) are at risk of being disbarred (Ford 2009). As one lawyer lamented in an interview with this newspaper, “Lawyers are walking on thin ice in China” (Ford 2009). Given that legal filing based on labor laws is relatively safe from such repercussions, legal professionals have increased their representation in increasingly profitable individual labor issues, such as labor contracts, social insurance, severance payment, overtime compensation, and workplace discrimination.

Trade Unions

In this section, I underscore that helping individual workers redress their grievances is one of the *few* lucrative strategies that trade unions, especially regional trade unions, can employ. Here, I examine how regional trade unions provide legal aid and why they recently have become significantly active and even aggressive. The All-China Federation of Trade Unions (ACFTU) is

the sole official trade union in China. Its membership amounts to 213 million, making it the largest national union federation in the world (Howell 2008, Friedman and Lee 2010). However, trade unions have barely acted as the worker representative and are instead considered to be ‘nugatory’ or ‘shell’ unions (Metcalf and Li 2005, Chen 2009). When compared to unions in similar post-communist countries (e.g., Russia and Vietnam), trade unions as organized labor are considered much weaker (Chen and Sil 2006, Chan and Norlund 1998).

The failure of a labor union as worker representative in China is due to two structural reasons. Above all, Chinese trade unions are a semi-state organization and their priority is to serve the state’s goals, not worker rights and interests (Chen 2003, 2004, Lee 2007, Gallagher 2005, Taylor et al. 2003, Metcalf and Li 2005). They lack the independence enjoyed by trade unions in liberal democratic states, which is considered vital if unions are to truly be effective. Moreover, the Chinese leadership has allowed far less autonomy to ACFTU than to similar government organizations (e.g., All-China Women’s Federation (ACWF) or the Communist Youth League (CYL)) for fear of an independent union movement such as the Solidarity movement in Poland (Wilson 1990, Howell 2008). In addition to lack of freedom, the typical organizing style has contributed to weak workplace unions. Union organizing in private firms is a top-down process designed to satisfy the objectives of union bureaucracies, rather than a bottom-up process born out of worker initiative (Chen 2009). In general, the regional ACFTU sends high-level officials to visit private companies to persuade employers to set up trade unions. This gentle persuasion naturally causes management-dominated unions, which have no power and legitimacy to protect workers’ rights and interests when negotiating with management. On the management side, for example, an HR director or production team director may still hold the position of workplace union chairman, with the tolerance of the regional ACFTU. As a result, the workplace union

chairman prioritizes production over workers' interests and rights (Howell 2008). Its role inside the factory as representative of labor, a representation of workers' rights and interests on the shop floor, has become essentially null and void (Chen 2009). This scenario plays out in foreign firms in China as well (Gallagher 2004). It is no surprise that, during the strikes in Chongqing over the past few years, taxi workers have completely bypassed the workplace unions, approaching regional unions, instead.

However, there have been recent suggestions that ACFTU is not monolithic (Liu 2010), and that we need to keep an eye on ongoing changes therein. Chen (2009) suggests that while workplace unions remain largely impotent and fail to represent workers, regional branches have become more responsive to their members. Several studies highlight regional level ACFTU's more active role in organizing, collective bargaining, tripartite system (Liu 2010, CLB 2008, 2009), legal mobilization (Chen 2003, 2004), stricter law enforcement (Chou 2011), and watchdog activities against multinational corporations (CLB 2008, 2009). Here, I focus more on the legal aid function of regional trade unions. The Measures for Legal Aid under the Trade Union Law, which the ACFTU issued in 2008, urges unions to establish a legal support system to provide free services to workers. The forms of legal aid permissible under the Measures include 1) provision of legal advice, 2) drafting of legal documents, 3) taking part in consultation and mediation proceedings, and 4) representation in arbitration and legal proceedings.

The local trade union's provision of legal aid can be interpreted to be the result of the interest overlap between the government and ACFTU. The Chinese government, both central and local, needs more societal level resources to serve and aid aggrieved workers. It recognizes the importance of bolstering the ACFTU as a representative of workers and as an employer ethics watchdog. In turn, taking the initiative in providing legal aid is one of the few available ways by

which the ACFTU can regain power and reemerge as a trustworthy labor organization. This is especially important after the ACFTU lost workers' trust during industrial restructuring over the past 30 years, due to its placing the state before workers (Baek 2000, Taylor et al. 2003, Chen 2003, 2004). Surely, the growth of legal aid has provided the regional ACFTU with a viable means of handling labor disputes, as well as increasing their public visibility. As legal consumers, more and more workers become aware of the different attitude of unions at various levels. They thus use these institutions differently. In many cases, workers bypass the workplace trade union which discourages workers from filing grievances and instead, bring their issues to the legal aid center provided by the regional trade union (Zhang 2010). ACFTU's participation in the law-making process deserves attention as well. Over the past two decades, ACFTU's legal department has taken part in drafting major labor laws at the national and municipal levels. In particular, ACFTU has recently been quite effective in securing pro-labor legislation at the national level. The case of Labor Contract Law 2007 is a good example of ACFTU's involvement in law making processes, both in the draft making and revision processes. As an outgrowth of such experience, unions nowadays take part in the meetings of all administrative departments wherever workers' interests are involved.

In sum, trade unions, particularly regional ones, have become very active in helping individual workers redress their grievances. Collaborating with individual workers in identifying and correcting employer wrongdoings, a task fully supported by the central leadership, offers the ACFTU a new opportunity to become more relevant in the face of its identity crisis.

Critiques

Though a growing number of studies mention recent, active involvement of labor-related stakeholders in worker grievances in China, there is almost no systematic analysis of the

distinctive mechanisms by which these social actors contribute to better labor enforcement and compliance there. Most studies stop at simply admitting that social actors contribute to enhancing workers' right awareness, but regarding overall labor law enforcement and compliance they tend to underestimate or even ignore the role of social intermediaries. Such skepticism, I suggest, originates from four root causes: 1) a weak civil society, 2) distrust of state-designed voice mechanisms, 3) inherent flaws of workplace unions, and 4) the worker-oriented research tradition.

First, many scholars express doubt that social intermediaries are strong enough to seriously influence enforcement and compliance. Most studies state that the role of these actors remains complementary to local state functions (e.g. CHRD 2009, CLNT 2010). Their second reservation is in regard to official voice mechanisms, including labor bureaus, labor arbitration committees, and courts (Chen and Sil 2006, Friedman and Lee 2010, CLB 2007). According to some critics, efforts by social actors to shepherd aggrieved workers through official voice mechanisms by enhancing their willingness and legal knowledge are often useless because the severely overburdened official mechanisms are frequently unable to efficiently and fairly resolve such conflicts. The third reservation relates to the absence of real workplace unions. It is suggested that when workers have no basic rights (e.g., freedom of association, right to bargain, or right to strike), reliance on official mechanisms to redress grievances is not realistic (Chan 2009, Chen 2007, Friedman and Lee 2010, CLB 2009). Last but not least, some skepticism is leveled at the typical worker-oriented research tradition of many China studies. Most research has been conducted from the standpoint of abused workers (e.g., Lee 2007). This approach often concludes that individual rights-based labor regulations fail to provide a solution to workplace conflicts (e.g., Chan 2010). Although this argument rightly points out inherent problems in the

legal rights process for the worker, one might be reasonably skeptical of an approach that largely misses the other side, namely, that of the employer.

Here, I stress several reasons why more attention must be paid to how social actors influence labor law enforcement and compliance. Above all, present research fails to reflect what occurs on the ground. Strikingly different from what is reported in existing studies, almost all the employers that I interviewed in the past three years (2007-2011) expressed serious concern about workplace risk and have changed some of their workplace practices accordingly. Nevertheless, we do not know whether or how much social actors exerted an influence in their decisions. Next, despite the fact that the employer is a key player in law enforcement and that the goal of enforcement is basically to seek compliance from the employer, very little is known about how employers perceive and respond to recent worker bottom-up legal activism done in conjunction with social actors.

Given these points, in the following I explore how social intermediaries contribute to better law enforcement and compliance in China. The research for this study combined extensive fieldwork and numerous interviews with workers and employers in two regions in Jiangsu Province. The fieldwork involved participant observation, site visits, and interviews with various social intermediaries (media, local trade unions, lawyers, labor-related NGOs, and non-governmental legal clinics). Short, semi-structured interviews with employers and workers were conducted between April and September in 2011. Given the characteristics of this study, I followed an inductive case study methodology. This method is accepted when the question is exploratory, the state of prior research is immature, the purpose of analysis is to identify emerging or understudied patterns, and the major goal of research is to propose a suggestive theory that invites further work (Eisenhardt 1989, Eisenhardt and Graebner. 2007, Edmondson and McManus 2007).

Nanjing and Kunshan in Jiangsu Province are the specific field sites that I have chosen. A few characteristics of Jiangsu Province have been taken into consideration. As the hub of the electronics parts industry, which involves labor intensive manufacturing, Jiangsu Province has a large working class population. It is also a region where actors of interest (various labor-related social intermediaries) have reached a certain degree of development. Thus, I can observe an active and meaningful dynamic among labor-related stakeholders. These regional conditions have been helpful in drawing up an account of emerging labor law enforcement in China. Although it may be too soon to apply these results to the whole of China, I believe that this study sheds light on a certain emerging pattern of labor law enforcement there: the key is to understand the increasingly vibrant activities of various social intermediaries in the labor domain. In essence, I identified three major activities of these intermediaries that are intensifying employers' uncertainty and concerns. First, the intermediaries contribute to strengthening top-down formal state enforcement by providing information to labor agencies, by indirectly pushing the state to enforce the law, and by directly pressuring firms to follow the rules. Second, they facilitate workers' bottom-up legal activism by providing legal news, knowledge, and advice; representing workers in front of arbitration committees or in courts; and by helping workers prepare for future use of the legal procedures. Third, they contribute to better enforcement and compliance by directly influencing employer decisions. They do this by increasing the violation costs that employers perceive, through inviting government intervention or damaging employer reputations. Below, I detail the activities of each intermediary.⁶¹

⁶¹ I note that my field research consists of an analysis of archival data preceding the fieldwork (e.g., analysis of local newspapers, government reports, and NGO reports), face-to-face interviews with various social intermediaries, and participant observations of social intermediaries (legal clinics, labor arbitration committees, and factory's HR departments), and post-interview analysis including fact-checking and interviews with relevant actors (e.g., local scholars, workers, local officials, and HR managers) over the

Social intermediary 1: Media

The media market in Nanjing and Kunshan consists of over ten newspaper and broadcasting companies including those at both provincial and municipal levels. Four newspapers lead a market; they are 揚子晚報, 現代快報, 金陵晚報, and 昆山日報. As previously mentioned, harsh market competition has driven a price and coverage war among newspapers particularly in Nanjing since the 1990s. This situation was called the “big war among Nanjing’s newspapers” (Nanjing Baoye Dazhan) in the region. Thanks to the price war, the price of the newspaper was lowered to 0.1 RMB in 1999. More importantly, harsh competition resulted in diverse, active coverage of labor issues (e.g., employer wrongdoings) that otherwise would not have been possible. Below, I detail how such active coverage by the media contributes to better labor law enforcement and compliance in various ways in the region. Specifically, I identify three mechanisms.

First, the media play an important role in enhancing the state’s top-down enforcement. Local newspapers and television stations actively engage in special local-level campaigns such as “Rule of Law”, “Justice to Migrant Workers!” and “Miserable Workplace Correction!” The media help labor officials to increase public awareness about these special campaigns and to focus public attention on specific campaign goals. The <Yangzi Evening News> helped the local government address wage arrears issues. This newspaper has been running phone services in collaboration with Nanjing trade unions and provided unpaid (or underpaid) workers with various consultations supplying information about where and how to report wage arrears, in addition to regularly reporting success stories. This collaborative campaign contributed to a substantial decrease in wage arrears in the region from 2.8 million in 2006 to 2.7 million in 2007,

past three years (2008-2011). In doing so, I collaborated with one scholar in Taiwan.

and to 1.5 million in 2008.⁶² Similarly, the <Jinling Evening News> and <Yangzi Evening News> have played an important role as a conduit between workers and the local government; on behalf of the local government, these newspapers have disseminated a labor regulation handbook, which was published by the Nanjing labor department. This book includes detailed information about critical issues at workplaces such as wage, worker injury, insurance, and specific processes for how workers can reach the relevant government agencies.⁶³

The media are also very useful to labor officials in identifying and publicizing employer wrongdoings; well aware that negative, sensational coverage attracts attention, they willingly expose horrible working conditions and exploitative employers directly to the public and thus indirectly to labor agencies. Once the issue is reported in the media, information about similar bad employers surfaces on newspaper and labor department websites. Then labor officials have only to visit those workplaces and sanction problematic employers (though they are sometimes criticized for failing to have corrected the situation in advance). As such media campaign facilitates quick resolution of the complaints by workers, the media have become recognized as an efficient problem-solving channel among workers. An interesting resulting phenomenon is that workers seek out some famous reporters to file complaints, even before seeking the relevant government agencies.⁶⁴ Burgeoning legal documentary programs and newspaper columns similarly induce bottom-up information-gathering and thus indirectly help labor agencies enforce the law in a timely manner.

Second, the media contributes to bottom-up enforcement by enhancing workers' legal knowledge and their willingness to pursue legal avenues. For migrant workers, newspapers and television

⁶² Yangzi Evening News, January 12, 2008, January 15, 2008, January 17, 2008

⁶³ Jinling Evening News October 25, 2004, December 11, 2006, Yangzi Evening News February 1, 2008

⁶⁴ Also, see on-line discussions, such as <http://www.xici.net/d77306422.htm>

are the main source from which they learn about the world of labor laws and facts such as “workers are entitled to social insurances,” “overtime work has a premium of 150 percent, 200 percent, or 300 percent of normal wage,” and “employer failure to sign a written contract can benefit workers later with double wage recompense.” In fact, most migrant workers are ignorant of labor laws when they first start their jobs in urban areas.⁶⁵ The media’s active coverage of labor news, including investigative reports about labor abuses and their continuous focus on high awards in the courts, has greatly raised workers’ rights awareness and created high expectations for workers who decide to take legal action. In particular, the role of the media was critical in informing workers of their rights in the implementation process of a series of laws in 2008 (Gallagher and Stockmann 2008). As the media initiated the public debate, workers have now been exposed to legal issues for a substantial amount of time. When asked how they learned about new labor laws, most workers mentioned newspapers and television programs. Legal advice columns are popular in the region. Such examples are “Lawyers are around you”(lushizai nishenbian) by the <Yangzi Evening News> and “Reporter Xu helps you discuss salary” (Xujizhe bangni taogongzi) by the <Jinling Evening News>. The <Xiandai express> and <Jinling Evening News> have been running a hotline that offers legal consultation as well. In addition, the <Jinling Evening News> has recently installed a hotline specializing in female worker issues.⁶⁶ In many cases, the newspapers outsource labor columns to labor lawyers. Lawyers actively engage in labor columns not only because they get a sense of achievement from working for the public interest, but also because such activities can help them build their

⁶⁵ This ignorance is confirmed by most interviewees and newspaper articles. For example, the <Yangzi Evening News> pointed out that workers should be able to spell out basic information about the employer when they report or file a case to relevant state agencies. (Yangzi Evening News January 17, 2008).

⁶⁶ Jinling Evening News, March 8, 2011

own reputations in the field or gain opportunities to advertise their law firms.⁶⁷ It should be noted that newspaper reporters and lawyers are often surprised to face workers' ardent responses to the legal consultations they provide.⁶⁸ Furthermore, the newspapers provide a platform in which lawyers offer public seminars, for instance, the weekend seminars by Xiandai Express. These labor columns and public seminars often result in the production of handbook series. One such example is the <Handbook for Migrant Workers' Right Protection> (nongmingong weiquan shouce) by the <Jinling Evening News>.

Third, the media directly influences employer decisions by increasing the violation costs that employers perceive. The media's effectiveness stems from two primary factors. Media coverage calls for immediate state intervention. Higher-ranking officials often order a spontaneous inspection of the problematic employer who was revealed in the previous day's newspaper or investigative television report. Accordingly, small employers who are usually under the radar of official inspection are concerned about this kind of unexpected pop-up inspection. On the other hand, large-size companies, particularly foreign multinational ones can be equally or more concerned about damage to their reputations or brand images. A series of damning news articles about the employment practices of McDonald's and KFC in China is a good example of why this is true. In each case the company's use of dispatch labor was legal, but sensational reports of the practice forced them to change wages and hiring procedures in order to quell public outcry and restore their reputations.

Social intermediary 2: Lawyer/ Law firm

With the growth in the importance of the law and the legal profession since the beginning of the reform era, the legal services market has expanded rapidly. There are approximately 150,000

⁶⁷ Interview in Nanjing, July 2011

⁶⁸ Jinling Evening News October 25, 2004, Jinling Evening News April 12, 2006

registered lawyers and 100,000 unlicensed legal practitioners, who are often called “barefoot lawyers” (Lee 2008). The demographic landscape of the legal profession in Nanjing, the center of Jiangsu Province, reflects the growth in supply and demand in the region: only 692 lawyers and 76 law firms were registered with the Nanjing Bar Association at the end of 2001; in early 2010, the numbers have grown to 2866 lawyers and 228 law firms.⁶⁹ In a commercialized setting, it is hard to say that legal professionals only work in the public interest. Unless they are full-time “public interest lawyers” or “rights protection lawyers,” one would assume that lawyers would have medium-sized to large firms as their most important clients, and that they would tend to defend the interests of management. But in reality, the media are always on the lookout for eye-catching stories, and legal professionals are looking for chances to get established in their field. One lawyer mentioned that, “Labor laws have become the basic must-know for most lawyers regardless of their specialty. Since the threshold is relatively low, anyone can catch up very quickly.”⁷⁰ Legal professionals contribute to better enforcement and compliance in the following three ways, be their motives self-interest or the protection of workers’ rights and interests. First, the activities of lawyers and law firms complement the state’s formal labor law enforcement. They provide relevant information to, and conduct collaborative campaigns with the relevant government agencies. They do so voluntarily and/or involuntarily. Economically-oriented general lawyers and even public interest lawyers, all of whom have to renew their bar licenses annually, seek to collaborate with local governments. Regional justice departments assign the minimum requirement to local law firms and lawyers through regional lawyer associations. One example is the legal consultation and legal introduction task at a local popular

⁶⁹ <http://www.njlawyer.cn/nba.htm>, <http://www.lawfirm50.com/news/?action=show&id=192>

⁷⁰ Interview in Kunshan, August 2011

job market place.⁷¹ Lawyers not only provide introduction sessions to job-seekers about the local government's new labor policies, but also provide consultation to aggrieved workers for a minimum service fee (mostly for free) and connect them to relevant government agencies to seek redress.⁷² It should be noted that a growing number of young lawyers are participating in this project. Multiple interviews with these rookie lawyers reveal that they do so in order to accumulate experience dealing with labor cases, to boost their names in such government projects, and/or to help increasingly marginalized Chinese workers.

Second, at the same time, legal professionals do play a critical role in enhancing workers' legal knowledge and awareness of their rights. During my visits to several law firms in summer 2011, I encountered young workers who visited law firms to assess whether their cases were worth pursuing. I overheard them using phrases such as “quitting a job”(lizhi) and “working hours”(gongzuo shijian). Although these clients were not representative of all workers, it is sure that today's workers do not hesitate to knock at the door of legal professionals to redress their grievances. Legal service fees are no longer the absolute hurdle that they used to be to workers employing lawyers. Many lawyers are willing to provide cheap or pro bono services, considering the possible long term gains. Sometimes several workers seek a lawyer together pooling of their funds.⁷³

One emerging category of lawyers, “public interest lawyers (gongyi lushi),” deserves attention. This category of lawyers is booming in China due to the combination of personal motivation for workers' protection and the state's strong encouragement. These lawyers take on public interest cases only, at almost no charge. Their salaries come from the state during the contract period.

⁷¹ It is called 安德門勞務市場。

⁷² Interview in Nanjing, July 2011

⁷³ Interview in Nanjing, July 2011

The Chinese bar association provides support for their activities as well, financially and by dispatching supportive lawyers when necessary. There is an annual work load: each individual should process 40 legal cases, make 200 legal consultations, and publish 3 papers. They are also required to visit local neighborhoods and to publicize legal information (interview July, August 2011). It is of note that public interest lawyers consist of two groups: one group is established lawyers with over 10 years of legal experience who care more about workers' rights protection and/or personal reputation enhancement. The other group is made up of young aspiring lawyers who seek to work for weak people and/ or seek visibility as public interest lawyers.

Third, legal professionals directly motivate employers to comply with labor laws in a positive and/or negative way.⁷⁴ On the one hand, company-side lawyers play a significant role in creating normative legal culture by persuading employers that legal compliance pays off, given the increasing labor unrest and the financial and reputational costs caused by workers' reporting and/ or filing. A locally well-known lawyer that I interviewed stated,

"I was extremely busy in the years of 2006 and 2007, when a series of labor laws were about to be issued and enacted."⁷⁵ My consulting was mostly focused on the establishment of preventive HR/labor practices to reduce potential legal risk that might be caused by social intermediaries and workers. I got the impression that most customer factories later thought to themselves that compliance was more profitable in the end." (Lawyer, Nanjing, 2011)

Likewise, through legal consultations, the employers come to learn that they need to observe laws at least to a minimum level lest they undertake unexpected greater costs later. In this sense, company-side lawyers play an important role in motivating employers to maintain better standards. On the other hand, labor-side legal professionals negatively motivate employers to follow the rules, by either reporting employer violations to the labor agencies or publicizing

⁷⁴ By positive, I mean "persuasive in a good sense". By negative, I mean "threatening." I refer to May (2004).

⁷⁵ The Labor Contract Law, Arbitration and Mediation Law, and Employment Promotion Law were in 2008.

them. Increasingly, sympathetic lawyers and barefoot lawyers report worker accounts of employer violations directly to local agencies. Reports submitted by these actors are more powerful than those submitted by workers; thanks to their expert knowledge of labor law and experience, they are savvy regarding how to best influence a violating employer. For example, one electronics factory in Shenzhen which forced employees to work excessive overtime had to pay a fine of 20,000 RMB after one barefoot lawyer reported the issue to the labor department (CLNT 2007). In sum, the increased initiative of legal professionals in pursuing the protection of worker rights has caused a huge number of previously hidden labor disputes to come to the surface, and has thus caused ongoing headaches for employers who continue traditional workplace practices.

Social intermediary 3: Social organizations (university-affiliated legal clinics and NGOs)

Besides professional lawyers who work within the formal legal system, there are a growing number of social actors engaging in labor law enforcement and compliance. These are various NGOs and university-affiliated legal clinics. Nanjing provides a relatively friendly environment for social organizations to thrive in. Well-known NGOs such as Facilitators (Xiezuozhe) and Amity (Aide) have taken part in caring about migrant workers since the early periods of these organizations. The Nanjing branch of Facilitators is the first registered social organization in the Yangze River Delta (YRD) area (2007); the Amity foundation has had its national headquarters in Nanjing since 1985. On top of that, university-affiliated legal clinics actively engage in this issue. It should be noted that, as a national education center, Nanjing boasts of a large number of higher-level schools, which is critical for the growth of social organizations. Given the situation that social organizations and legal clinics need volunteers, interns, and contract staffs, affluent college students in Nanjing are important human resources who contribute to sustaining and

developing these social organizations. University-affiliated legal clinics are well known for their outstanding activities. In particular, Nanjing University Legal Clinic is considered to be one of the most exemplary cases in addressing labor protection issues. Below, three mechanisms of contribution are detailed.

First, labor-related social organizations contribute to strengthening top-down enforcement by the state in multiple ways: by providing on-the-ground information to labor departments, by saving resources so that labor officials can focus on important issues, by inadvertently publicizing labor officials' complacency, or by helping local officials ask for more resources from upper levels for better enforcement functions. Labor NGOs are more subservient to local officials due to the fragile and sensitive nature of labor issues. Accordingly, they are more than willing to help labor officials enforce the existing law by accompanying and/or linking aggrieved workers to related government bureaus and providing violator lists, which are learned about from contact with aggrieved workers, legal education sessions, consulting, and representation work. Relatively stable university legal aid centers are not very different, in that they want to maintain good relations with local governments while serving the workers' interests.

These social organizations conduct what was originally the function of local governments. So-called "Community Activities" (shequ huodong) include paying visits to residential areas of migrant workers, delivering government notes and policies to them, and holding cultural education events. By doing so, these organizations act as a bridge between migrant workers and local governments, often linking urgent cases of workers to relevant state agencies. Since these activities supplement what local governments at the basic level should do, Street Offices (Jiedao) welcome such activities of these organizations. In some cases, Street Offices are even willing to

provide office space for these social organizations.⁷⁶ It may be said that social organizations have achieved a breakthrough through their community outreach activities under the otherwise repressive authoritarian regime in China.

Specifically, the Nanjing branch of Facilitators helps migrant workers settle in the city and seek effective solutions for securing their rights. Through their accessible office spaces at the street level, which are called the “home of new citizens” (xinshimin zhijia), this organization offers consultations on various issues and organizes cultural activities for the children of migrant workers. Rather than portraying their work in explicitly political terms, Facilitators emphasizes its role as a conduit between migrant workers and the local government. Due to such a focus on pedagogical and cultural activities, this organization has gained support from many different government units at the city and provincial levels.⁷⁷ On the other hand, the Amity Foundation, known for its long history and affluent resources, has made more concerted efforts to care about migrant workers in the region.⁷⁸ Besides supporting community activities, this organization has offered direct financial aid to schools for the children of migrant workers and supported legal service provisions for migrant workers at the *Andemen* job market.⁷⁹ Since these activities address the real problems faced by migrant workers, local governments have encouraged and collaborated with this organization.

Second, labor NGOs and legal clinics facilitate workers’ bottom-up activism by 1) providing legal news, knowledge, and consultation, 2) representing workers in arbitration committees or in

⁷⁶ Interview in Nanjing, August 2011

⁷⁷ see numerous reports <http://www.cdccf.ngo.cn/>

⁷⁸ The Amity Foundation was established in 1985 at the initiative of 丁光训, who is 原全国政协副主席. Its mobilized assets so far reach up to one billion RMB.

⁷⁹ Yangzi Evening News December 3, 2007. Also, see <http://www.longhoo.net/gb/longhoo/news/media/jlwb/userobject1ai778541.html>, <http://www.xici.net/#d145218332.htm>. For legal service provision for migrant workers at the *Andemen* job market. <http://www.amityfoundation.org.cn/article/view.aspx?id=249>

courts, and 3) helping workers prepare for future use of the legal procedures. NGOs spur workers' rightful legal activism by raising their rights-awareness and willingness to use the law. Existing studies indicate that, in general, workers receive three types of help from NGOs: telephone hotline advice, off-line legal education and consultation, and representation in legal procedures (Zhang and Smith 2009, He 2009). Hotlines are well known as a safe, easy means of communication for migrant workers. Workers prefer hotlines because they can use them anonymously and not expose themselves to outside repercussions. Besides this, since most factories are located in the suburbs, people who are not able to reach the NGO offices in cities or downtown can call the hotline.⁸⁰ Some workers in large cities visit NGOs on weekends. The NGO office often becomes a gathering place for those workers who are new to the city. Though their level of expectation was initially very low, workers now come to acquire useful specific legal information there. For example, those who intend to leave their companies come to the NGO office to learn how to receive their unpaid overtime wages. Overall, NGOs not only provide workers with specific legal tools, but also inspire workers to think about broader issues, such as discrimination which denies them equal treatment with urban workers, workplace safety, and workers' rights including holiday observances (Chen 2003, 2004, Gallagher 2007). In this way, NGOs successfully facilitate bottom-up enforcement. Specifically, the Nanjing University's legal aid center is one of the most prominent of its kind in terms of legal services provision. Established in 1998, it has grown to be a nationally recognized organization which supports the protection of workers' rights. Annually, the center holds around 5,000 legal consultations and represents workers at courts over 120 occasions. More than 30,000 brochures are distributed to workers on the streets each year. The Kunshan branch of the center, which opened in 2008,

⁸⁰ Interview in Suzhou, April 2008 and in Shenzhen, May 2010

undertakes a comparable amount of work with a staff of only three and three student volunteers. They carry out 250-300 legal consultations per month and take on between 5 and 8 cases.⁸¹ The center is more worried about the shortage of staff than about the workload. One staff member that I interviewed mentioned that the legal clinic at Nanjing University has a heavier workload than any other legal clinics in the region, including those run by government agencies.⁸² Legal services are provided in various formats: face-to-face, over the telephone, via email, and online. In particular, university legal clinics are quite active and progressive in undertaking small-scale community activities, and in face-to-face interaction with migrant workers. A group of young volunteers visits workers' residential areas over the weekend, and provides one-to-one legal advice on the spot. They do this because the weekend is the only time when many workers have any time off. The young volunteers know from experience that they should not just wait in their office for workers to come to them, but must go out to visit them, as many workers are unwilling to come downtown where the offices of the legal aid center area located. Such visits provide workers with necessary knowledge which they would not have gained otherwise.⁸³ Additionally, young volunteers at legal clinics pay visits to hospitalized workers injured in industrial accidents and inform them of their entitled rights for injury compensation, also providing on-the-street legal consultation at the various local job markets.⁸⁴ One emerging tendency today is the active collaboration of university legal clinics,⁸⁵ lawyers, regional trade unions, local media, and regional state agencies including judicial bureaus, public security

⁸¹ Interview in Kunshan, August 2011

⁸² Interview in Kunshan, July 2011. It may be one reason why the local government is so positive about the activities of this organization. In comparison, according to official data for 2010, legal aid centers run by the regional trade union across Nanjing city took on 597 cases, 487 of which were processed.

⁸³ Interview in Nanjing, August 2011

⁸⁴ Participation observation, June 2010

⁸⁵ In Nanjing and Kunshan areas, Nanjing University, Nanjing Normal University, and Suzhou University run legal aid centers.

bureau, Street Offices, Residents Committees.⁸⁶

Third, the activities of local social organizations directly influence employer perception and decision, thereby contributing to better enforcement and compliance of labor laws. These social organizations, which are under the control of local governments or foreign funding sources, are more eager to directly and visibly challenge employers who are in violation in order to satisfy an annual quota or solicit local government subsidies. One HR informant expressed his concern by saying, “These social actors look very weak individually, but are collectively bringing about serious risk to employers over time.”⁸⁷ Simply speaking, social organizations are troublesome to employers, since they amplify problems in the workplace. Qualitative interviews conducted in previous years confirm such a perception and pressure on the side of employers.

“The hardest thing for me is dealing with Chinese workers. To me, they are unpredictable. When upset, some workers quit their jobs and report the company’s shortcomings to the local bureau. *Worse, there are many social organizations that coax these workers to report their grievances to the local state agencies.* So, we need to observe these laws to at least a minimum level so as not to incur unexpected costs later.” (Managers in Nanjing and other cities, 2009 and 2010)

Social intermediary 4: Trade Unions

Nanjing’s trade unions stand out. They are well known for their progressive and worker-supportive activities in China, including an introduction of collective bargaining (*jiti xieshang*), since 2004.⁸⁸ The unionization rate of the city is over 70 percent currently, aiming to reach 80 percent. The current chairwoman of Nanjing ACFTU, formerly a high-ranking municipal official,

⁸⁶ Yangzi Evening News April 18, 2007. Also, see http://www.njsfj.gov.cn/www/njsfj/fltd-mb_a390512052172.htm, http://sun.njnu.edu.cn/news/2010-12/225736_664360.html, http://zm.njnews.cn/html/2010-11/11/content_665344.htm

⁸⁷ Interview in Shanghai, May 2010

⁸⁸ http://njrb.njnews.cn/html/2008-03/25/content_22383.htm

has provided momentum to these salient unions' activities.⁸⁹ With this background of strong resources, regional trade unions engage in labor law enforcement and compliance in three ways. First, regional trade unions contribute to better labor enforcement by conducting joint inspections and special campaigns with local agencies such as the bureaus of labor, tax, and environmental protection. Understaffed local government agencies tend to ask for help with inspections from the ACFTU. In general, special campaigns are carried out three to four times a year to address employment and labor relations issues. For instance, as early as 2004, Nanjing trade unions pushed an inspection on the issue of wage arrears. Ten lawyers joined this campaign to provide legal consultation to workers on the spot.⁹⁰ Similar campaigns have since continued in the region: regarding the issue of wage arrears, in collaboration with the <Yangzhou Evening News> since 2006,⁹¹ regarding the issue of migrant workers' rights protection, in collaboration with the <Jinling Evening News> and other regional labor-related government bureaus since 2006 onward.⁹² These campaigns have operated under stricter guidelines since the new 2007 Labor Law. As regional trade unions' officials gain a better understanding of workplace issues, they contribute to enhancing labor inspection capacity. In addition, the information collected from the local union's legal aid center helps labor inspectors identify emerging as well as urgent issues. As labor inspectors and trade union officials generally maintain a collaborative relationship, the exchange of information is timely and quick. It is of note that this collaborative relationship has become more visible in Nanjing, since an influential person has led the organization.⁹³

⁸⁹ She was a vice-mayor and a member of the standing committee in Nanjing. Multiple interviewees agreed with her outstanding role in local unions' recent outstanding activities.

⁹⁰ Yangzi Evening News December 14, 2004

⁹¹ <http://2009.lawyers.org.cn/info/4966d7c1b0744ce09ae6e69cb6318425>,
<http://news.sina.com.cn/c/2008-01-05/000213198793s.shtml>

⁹² http://www.js.xinhua.org/zhuankan/2006-10/29/content_8375100.htm

⁹³ Interview in Nanjing, July 2011. In the past, the position of leading the regional trade union was

Second, by actively engaging in workers' rightful legal activism, regional trade unions play a considerable role in facilitating bottom-up enforcement. Along with the government administrative structure, Nanjing has built legal aid centers deep down to the lowest level: from the city level to the district/county, and street/township levels. As of 2011, Nanjing has 114 legal aid centers run by the regional trade union, and these were supported by 162 lawyers.⁹⁴ Scholars such as Chen (2003, 2004) and Gallagher (2007) indicate that legal aid centers run by the regional trade unions provide workers with legal education and consultation, represent workers at arbitration committees or in courts, and promote public discourse on the labor rights issue. It is suggested that this type of legal aid not only helps workers incorporate real legal language into their fight against employers, but also broadens workers' horizons in asserting their societal rights. By going through the litigation process, workers learn how to strategically make use of the current system in a rightful way. This new experience, regardless of the result, gets workers to notice possible opportunities and helps them make further use of the legal process. In addition, the union's institutional status in the state structure matters both to employers and workers (Chen 2004; Gallagher and Stockmann 2008). Unions' formal affiliations with central and local government bodies help stabilize this legal aid system, buffering it from any employer-initiated threat or interruption in local areas. At the same time, the fact that a state-organ helps workers pursue their rights makes workers feel less threatened about possible employer retaliation. Some workers expect that the union will respond positively to complaints because they view them as a government agency that can and should help resolve their grievances.

Because the successful redress of workers' grievances is very useful in boosting the positive role of trade unions, regional trade unions have made concerted efforts to offer various legal help to

regarded as nominal among the government hierarchy.

⁹⁴ <http://sz.yzwb.net/jiangsuxinwen/2011-12-29/870088.html>

workers. They dispatch their staff to many different places and venues for more active interaction with workers. One such example is the regular legal consultation at the *Andemen* jobs market. In collaboration with local media and lawyers, regional trade unions provide various legal services to workers in need. Trade union legal aid centers also hold many “study sessions” (Xuetang) at multiple locations. By participating in such sessions, workers learn how to strategically use the current system in making their claims “rightful.” One informant mentioned how these study sessions offer a great deal of useful information and many strategic skills, for instance, how to claim their rights against a foreign firm.⁹⁵ It is important to note that, while covering the union activities, the local media often deliver the message that, “by joining the trade union, workers could gain better opportunities to protect their own rights and interests.”⁹⁶

Third, the regional trade unions put direct pressure on employers by calling for employers’ attention to labor compliance. Adding pressure on employers is done through various ways. The unions pay a visit to the targeted firm for inspection. Since regional trade unions are considered to be semi-government organization among employers, they cannot be easily ignored. In recent years, regional trade unions have become more active in this kind of watchdog activity against employer abuse of workers, mainly because they seek to reemerge as a defender of workers’ rights and interests (Chen 2003, 2004, Baek 2000). On the one hand, the regional trade unions indirectly contribute to better compliance by strongly pushing unionization campaigns. One HR manager that I interviewed said, “We tried to avoid a unionization campaign by the regional trade union. For that, we faithfully follow the rules to show that we care about workers and have a good relationship with our workers.” In addition, regional trade unions take advantage of foreign multinational companies (MNCs) to enhance overall compliance in the region.

⁹⁵ Interview in Nanjing, July 2011

⁹⁶ <http://news.sina.com.cn/o/2007-04-02/084611548932s.shtml>

According to interviews with HR managers, one easy way for regional trade unions to alarm local employers is to target foreign MNCs for their slight violations of labor law or for their practices which are between legal and illegal. In this way, regional trade unions can boost their existence and exert overarching influence on all domestic and foreign employers in the region.

Social intermediary 5: Online social networks

One of the critical enabling factors in bottom-up enforcement is the abundance of diverse high-tech tools available to workers, namely mobile phones and the internet. Mobile phones are at the top of the shopping list for migrant workers arriving in urban areas. This is the main medium through which workers share information about the best jobs with the best wages and benefits, news about peers winning arbitration awards, and even details about the latest sexual harassment cases at the factories. Information sharing goes beyond simple conversations and text messaging. Young workers can now use their mobile phones to take pictures documenting a factory's internal goings-on, such as labor abuses and harassment, to use as evidence in future legal action (Roberts 2010). These days, more and more workers are getting together on social network sites, blogs, and online forums. Zhang (2010) indicated that about two-thirds of the auto workers she interviewed were regular bloggers or active participants of online discussion boards and social networks. She emphasized that more than half of them had posted comments and criticisms on these sites on everything from wage issues, overtime, and company policies, to management despotism on the shop floor. Below, three ways in which online social networks influence enforcement and compliance will be detailed.

First, online social networks complement state enforcement by reducing the barriers of time and geography on the part of workers. At the present days, one salient phenomenon is that aggrieved workers ask questions about how to redress their grievances on blog and online discussion

boards. Then anyone can jump in and offer detailed know-how about dealing with the issue. Meanwhile, some cases of employer wrongdoings can quickly become local hot issues resulting in quick and severe inspections of the targeted facilities. It should be noted that labor officials often visit local discussion boards and blogs to check the local labor situation and, if they notice some extreme cases, they make a phone call to or pay a visit to problematic factories to correct the issue, often issuing a fine to violating employers. Related to this, more and more workers visit the website of the labor department and submit their grievances online these days. The response from the labor department is quite quick, mostly taking less than one day. One example of the usual responses is: “In your case, the employer is definitely wrong. You can file a case in your district and receive financial compensation.” Likewise, this “barrier-reducing feature” of online social networks (Norris 2001) enhances state enforcement, and is particularly important to migrant workers who otherwise could not get access to redress for grievances in an unfamiliar urban area.

Second, online social networks greatly facilitate bottom-up enforcement by enhancing legal knowledge and rights awareness among workers. I found during my fieldwork that, on the locally popular online discussion boards, a number of questions and answers had been posted regarding labor law, furthering workers’ interest and knowledge, and in effect, encouraging new forms of engagement in legal issues. I also found that, through the internet search function of cellphones, young workers gain necessary information very conveniently. When asked about the amount of time spent on internet and/or cellphone online searches, most workers replied that they usually kill time at internet cafes or searching with cellphones.

The internet not only allows users to seek out information at any time, but permits deeper investigation into issues through the use of hyperlinks and search engines. Individual workers

can track legal issues in much greater depth and can personalize their own news consumption.

Internet users learn from each other. For instance, on the locally popular website in Kunshan, the topics and questions often raised and discussed include: death from overwork, criticism of harsh treatment of workers by Taiwanese factories, sexual harassment by managers, and inquiries about specific clauses of the labor laws.⁹⁷

The new media also work as a platform for workers to discuss and plan collective activities. A very recent example is the strike that happened at LG Display in Nanjing at the end of 2011. At the initial stage, the rumor spread among the workers that the company was reducing its annual bonus and that the Korean workers were still eligible for this bonus.⁹⁸ Once the rumor had spread through the internet, it exacerbated the whole situation. Discontented workers started to make complaints on the internet. Some brought up the idea of going on a strike and through such facilitated communication, 8000 workers actually went on a strike right after Christmas Day.⁹⁹ Even before this incident was reported by the regular media, the news had first been spread all across China by *Weibo*, the Chinese version of Twitter. Even when the labor unrest had been settled through negotiations between management and workers, the spread of this exaggerated information through online social networks caused some repercussions. Through a series of media exposures (including both traditional and online media and networks), the strike became

⁹⁷ <http://www.xici.net/d154148532.htm>, <http://www.xici.net/d147695051.htm>, <http://www.kbcool.com/read-htm-tid-827842-page-1.html>, <http://www.kbcool.com/read-htm-tid-1928776-page-1.html>, <http://www.kbcool.com/read.php?tid=331552>, <http://www.kbcool.com/read-htm-tid-2012306-page-1.html>

⁹⁸ The rumor came out of workers' misunderstanding of the salary system. Originally, the company sought to reduce the amounts of annual bonuses, due to financial difficulties. It was not true that the company gave more bonuses to Korean workers. For more details, see <http://news.163.com/11/1229/02/7MDKPM6V00014AED.html?f=mail.news>.

⁹⁹ For instance, see conversations such as <http://www.xici.net/d159194953.htm>, <http://www.xici.net/d159532117.htm>, <http://www.xici.net/d159532341.htm>

national news.¹⁰⁰ This strike also developed into the area of the role of the trade unions, labor law, and the outright bashing of foreign firms.¹⁰¹

The third function, related to the two above is that online social networks significantly increase employers' perceived risk. One of the normal tasks for an HR staffer these days is to visit locally-popular discussion boards to check if there is any issue related to her factory. Given this situation, Harley Seyedin, president of the American Chamber of Commerce of South China expressed his concern in an interview with Bloomberg Businessweek as follows (Roberts 2010): "There are Internet cafés everywhere, so the workers can get information. They are starting to ask for more. The days of cheap labor are gone."

DISCUSSION AND CONCLUSION

In this paper, I explore what has recently made employers become more concerned about their practices and motivated them to bring their practices up to the higher standards in China.

Presenting two contrasting regimes of labor regulations in China, I showed that various labor-related social intermediaries are having an increasingly important impact on employers under the current responsive regime of labor regulations. Specifically, I provide three distinct mechanisms by which various social intermediaries contribute to better labor law enforcement and compliance. First, these intermediaries complement the state's enforcement function by providing information to labor agencies, introducing government policies to workers on behalf of the local government, and linking aggrieved workers (or workers in need of urgent help) to relevant agencies. It should be noted that the local government strongly encourages these activities to fill the void. Second, these intermediaries strongly induce workers' bottom-up

¹⁰⁰ <http://www.xinrenli.com/xinwenguanzhu/17736.html>

¹⁰¹ http://blog.sina.com.cn/s/blog_40345c100102dxzx.html?tj=1

enforcement by providing legal news, knowledge, and consultation, representing workers in arbitration committees or local courts, and enhancing workers' rights awareness overall. It is of note that international organizations (e.g., Oxfam and The Ford Foundation) have funded public interest lawyers, migrant NGOs, and university legal clinics for this purpose, and the Chinese governments are largely tolerant about these activities because they attempt to hold local officials and employers accountable for labor abuses, given the lack of state capacity. Third, but not least, these intermediaries increasingly challenge employers by publicizing employer wrongdoings to the public. Social intermediaries openly and loudly challenge employers, relying on all relevant sympathetic actors and pro-worker policies and legal provisions. They are keenly aware that unlawful employer behavior is one of the few issues that they can take a stand on safely. Armed with state slogans such as "harmonious society'," social intermediaries actively expose employer wrongdoings to the public and to the official mechanisms.

Overall, these actions to ensure workers' labor rights have had an unquestionable impact on employers. Almost all HR managers interviewed expressed serious concerns about possible risks of workers' bottom-up actions. As a result, in order to keep legal risks in check, employers have adopted new response patterns by either quickly bringing current labor practices up to standard or by employing expedient "avoidance" strategies, such as getting signatures for overtime hours and purchasing commercial insurance for formerly uncovered workers.

This situation is surprising, given that existing studies have largely underestimated the impact of bottom-up enforcement on employment practices. Most studies have suggested that labor abuses would continue in China in the absence of forced labor inspections and collective bargaining by independent workplace unions. Particularly, scholars who adopt the collective action approach (e.g., Chen 2007, Friedman and Lee 2010) have suggested that, when workers have no basic

rights (e.g., freedom of association, right to bargain, and right to strike), the individualized pursuit of rights cannot address fundamental labor abuse issues.

In seeking an interpretation of “how this unexpectedly high impact can be possible,” I would like to point out the unique aspects of the Chinese context. First, the physical environment of China’s export zones makes it possible for interesting news to spread very quickly. For example, news that workers are very likely to win a case against their employer for failure to purchase social insurance or non-payment of overtime premiums quickly spreads from factory to factory. The result is a vast number of similar cases filed through official mechanisms. It appears that the introduction of a series of new labor laws and the extensive exposure of workers to information about these laws (largely thanks to the closely connected structures of these factory zones and their high population densities) have allowed these workers to better understand some exemplary legal provisions. For this reason, managers of small and medium-sized factories have become far more concerned about copycat reporting and filing of legal cases among workers in economic development zones.

Another possible factor responsible for the unexpectedly high impact of social intermediaries relates to China’s deep-rooted socialist legacy. During my field research, I found that there were certain shared minimum moral values concerning ever-marginalized citizens in China, and thus the activities of social intermediaries who took care of marginalized people have attracted public attention and wide support. Most informants I spoke with in China expressed deep-rooted sympathy toward (migrant) workers and their fight for subsistence. Common responses included, “Migrant workers are human beings like us...we should treat them well...That is the way we live,” “They are my sons and daughters,” and “China is an egalitarian country. Look at the life of migrant workers. It is our responsibility to take care of them.” I noticed a consensus or moral

criterion among people that, regardless of the circumstances of the employer, certain requirements must be satisfied. In this situation, backed by public support as well as state encouragement, social intermediaries are able to openly and loudly challenge employers. In turn, employers' perception of risk has substantially increased.

This paper's account of social intermediaries resonates with the consensus that is emerging in studies of China's civil society (Shue 1994, Saich 2000, Howell 2004, Shieh 2009, Deng 2010, Hsing and Lee 2010). These studies indicate that we need to pay attention to the dynamic, interactive and multi-dimensional nature of the relationship of state and society in contemporary China, going beyond a whole focus on the corporatism and civil society debate. Scholars indicate that state-society relations are "becoming too complex and dynamic" to fit into any single pattern. Schwartz and Shieh (2009) indicate that the current system and state-society relations are institutionally fluid, ambiguous, and messy. Saich (2000) argues that the Chinese case is like a moving target that continually defies easy categorization. My findings demonstrate that social organizations take advantage of grey area to advance clearly contestable claims, employing state slogans to legitimize their activities. In summary, my study suggests that more attention should be paid to the on-the-ground dynamics when studying societal actors, and to the incremental social changes rather than a simple definition of them by the criteria of a pure form.

A couple of limitations should be taken into account in this study. First, this study focused on two regions in Jiangsu Province, and thus it is difficult to make generalizations about all of China from the findings. However, my preliminary fieldwork in other areas such as Guangdong, helps to strengthen my claim that social intermediaries are increasingly engaging in labor law enforcement and compliance in China. Future research can benefit from expanding the research sites and thereby assessing whether the influences of social intermediaries on employers are

salient across the board. Another limitation is that my field research spans only three years.

Future research can benefit by comparing several points of time in their assessment of employer perception.

This study contributes to the existing studies in a couple of ways. First, I identify a Chinese phenomenon – strong societal pressures (from diverse social intermediaries) on employers – which is different from current enforcement typologies but which contains several unique virtues. By doing this, I advance ongoing discussions about the varieties of labor law enforcement and compliance. Second, I offer a more pluralistic view of labor law enforcement beyond the traditional “employer-government-oriented” approach. This is important from a public policy standpoint in that the Chinese case can offer a feasible solution to ongoing discussion about global regulation, i.e., how to enhance compliance and improve labor standards internationally. Third, this study adds to current studies of China’s civil society by confirming that categorizations such as corporatism and pure civil society cannot capture the current dynamics underway in China, and that more attention should be paid to the dynamics and interactions of civil society.

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CHAPTER 5

VARIETY AMONG SECOND-GENERATION WORKERS IN CHINA: WORKERS' LABOR-RELATED LEGAL KNOWLEDGE

“Every worker is a labor lawyer by himself. They know their rights better than my HR officer.”
Frank Jaeger, a German factory owner in Southern China
“If all workers knew the labor law - all 600 million of us - then many factory owners would go bankrupt.”
*Xu Haitao, 28 year metal factory worker in Southern China*¹⁰²

There has been growing interest in characterizing the generation of Chinese workers, born during the 1980s and 90s. Numerous media reports and academic studies indicate that the members of the so-called “second-generation”, which accounts for over 60 percent of all workers in China, differ from their predecessors in several socio-economic aspects (Davis 2000, Pun 2003, Yan 2008, Jacka 2006, Chang 2009, Harney 2008, CLB 2011, Kim 2010). The second-generation is better off materially, spending much of their earnings on themselves, in contrast to the earlier generations of economically-oriented workers who moved to the cities to work and send money back to their families in their hometowns. Moreover, these young workers, mostly “only children”, are relatively better educated and determined to achieve personal development and freedom; they come to urban areas for fun or self-realization and plan to settle permanently and carve out futures in the cities.

Another characteristic of these workers is that they display a stronger “rights mentality” than their predecessors (Chan and Pun 2009, Pun and Lu 2010). With their higher legal consciousness, they are less tolerant of employer abuse and more willing to stand up for their rights, in sharp contrast with parent generations who were mostly subservient to management

¹⁰² Dexter Roberts. 2010. The Rise of a Chinese Worker's Movement. *Bloomberg Businessweek*. June 10, 2010.

and endured extreme labor abuses (Froissart 2005). Moreover, in the development and assertion of their rights, these second-generation workers are able to utilize extensive and diverse technology, namely mobile smartphones and the internet (Robert 2010). Zhang (2010) indicated that about 70 percent of auto workers interviewed were regular bloggers and/ or active participants of online discussion boards and social networks, and that they posted comments and criticisms on these sites on everything from wage issues, overtime, and company policies, to management despotism on the shop floor.

Against this characterization backdrop, this paper seeks to examine and hypothesize about the growing legal consciousness of second-generation workers in China, specifically in the realm of labor laws. This topic deserves close attention for several key reasons. First, workers' legal knowledge is a crucial component in China's complaint-based employment protection system. When workers do not know their rights and entitlements under labor law, they are unlikely to report abuse to a labor inspection team or file a case with the labor arbitration committee.

Literatures on access to justice and development have emphasized that legal awareness is the foundation for fighting injustice (e.g., Liebman 2004, UNDP 2004, van Rooij 2009).

Secondly, I stress that the implications of legal knowledge are more salient in the recent Chinese context, where the Chinese government strongly encourages aggrieved workers to "use the law as their weapon" (Qiao 2008, Gallagher 2006). Facing increasing labor unrest, it became a government priority to see that workers' grievances were resolved in an effective and timely manner within the state-designed legal framework, thus giving rise to the enactment of a series of pro-labor laws in 2008. The Labor Contract Law in 2008 strongly encourages aggrieved workers to address their complaints via legal mechanisms, enticed by fairly high financial returns on successful claims. Moreover, the New Mediation and Arbitration Law in 2008 has greatly

streamlined grievance procedures.¹⁰³ New complaints which satisfy the minimum reporting requirements must be investigated within 60 days.¹⁰⁴ Labor officials who ignore worker complaints run the risk of being sanctioned if their inaction is reported by the worker to upper-level state agencies.

Taking these points into consideration, this paper posits that legal knowledge is an important precondition to worker action in China. Further, by examining the degree to which second-generation workers in China understand legal ways and means, we can see that a wide variety exists among them – a fact which may help to predict and explain the trajectory of workers’ legal activism in China. Therefore, this paper seeks to provide a detailed analysis of the varying levels of legal consciousness among these young workers. I argue that individual workers have differing levels of knowledge depending on their personal characteristics and environment situation. In the sections that follow, I first present the theoretical rationale for the differing levels of legal knowledge among second-generation workers, followed by nine associated hypotheses. Finally, the results are then analyzed for discussion by presenting empirical evidence for the variation.

HYPOTHESES

Drawing on various literatures from diverse disciplines, this paper suggests that a person’s level of legal knowledge is influenced by three interrelated determinants: motivation, ability, and opportunity.¹⁰⁵ Motivation, fed by interest or need, can be an important determinant in a

¹⁰³ New law has simplified the arbitration procedures, shifted the burden of proof to employers, cancelled arbitration fees, extended filing periods, and introduced partial awards.

¹⁰⁴ Within 90 days for more complicated cases

¹⁰⁵ Given that no literature currently exists that explicitly deals with the determinants of legal knowledge, the literatures this paper refers to are those dealing in political knowledge, environment knowledge, brand knowledge of marketing research, and knowledge sharing (e.g., Bennet 1995, Delli Carpini and Keeter 1996, Althaus 2003, Kogut and Zander 1992, MacInnis et al. 1991, Johnson et al. 1982).

person's decision to seek out legal knowledge (Delli Carpini and Keeter 1996, Reeve and Hakel 2000). A person who has an issue at hand or simple curiosity in a certain circumstance may search for relevant information on her own, be more attentive to the specific information she encounters, and more actively digest and act on the information she acquires. The interest and motivation which specifically make a worker more serious about acquiring legal information or knowledge comes from various sources. Examples in current Chinese workplace include perceived risk (e.g., lay-offs and factory relocation), benefits (e.g., social and medical insurance), and monetary compensation (e.g., work injury compensation, severance compensation, and overtime premiums).

Ability can also influence the level of one's legal knowledge (e.g., Bennet 1995, Delli Carpini and Keeter 1996). Those with capability, skill and access can more effectively search for relevant information and then can better categorize, analyze, and mentally store the information gathered. In this paper, education and work experience have been employed as proxies to represent capability in information gathering and synthesis. In fact, work experience might be more important in this aspect than formal education since experienced workers may already have an understanding of workplace-specific practices (e.g., regarding social insurance, OT premiums, etc.) and may know how work-related legal provisions are personally relevant and useful to them.

The third factor, opportunity, also influences the scope of one's legal knowledge. It has been recognized that opportunity, defined here as the availability of information, plays a critical part in acquiring, keeping, and actively using knowledge (Althaus 2003, Bennet 1995, Delli Carpini and Keeter 1996). While motivation and ability are more related to an individual worker's characteristics, opportunity is more related to environmental factors surrounding each worker.

Those workers living in information-rich, urban environments where they can have better chance to involve themselves in diverse and frequent conversations among colleagues and who are exposed to various information-providers (e.g., the internet, newspapers, and magazines) are likely to have broader based legal knowledge.

With these three factors in mind, this paper sets forth nine specific hypotheses contributing to the variation in the legal consciousness of second generation workers in China. While each hypothesis contains aspects of all three determinants (motivation, ability, and opportunity), one factor may be particularly dominant. For instance, in hypothesis 4, it is shown how work experience contributes to the motivation, ability and opportunity to obtain legal knowledge by virtue of the worker's past interest, familiarity and exposure to work-related legal matters.¹⁰⁶

However, one determinant may be stronger or weaker upon the worker.

Hypothesis1: Gender

Traditionally, male workers have more diverse contact with others than female workers (Moore 1990, McPherson and Smith-Lovin 1982, 1986, 1987). Female workers tend to have smaller and more homogeneous networks in terms of age and hometown, while male workers get engaged in various social activities including outside activities (e.g., sports activities) with more diverse individuals (Inglehart and Norris 2003). In the men's broader networks, a larger amount of information may flow more frequently and freely. Labor unrest and the new labor laws in China

¹⁰⁶ Specifically, having work experience is related to motivation in that a worker who previously worked in a factory where OT premium was provided properly is likely to get motivated to learn about why current employer does not provide OT premium. Therefore, she may search for relevant legal information and/or take relevant news stories she encountered seriously. Second, having work experience also relates to ability in that a person with work experience can better digest legal information because she knows what a written labor contract, social insurance, or OT premium means by her previous experience. Last, work experience also relates to opportunity, or the availability of information. A person with work experience is more likely to have been exposed to diverse information through a variety of peer-workers in workplace over 10 hours a day.

have come under public debate recently but, more importantly, relate personally and directly to workers' lives. Specific legal provisions are now a topic of daily conversation. Male workers, having more extensive and diverse contacts with other workers, are likely to have a better knowledge and understanding of labor laws than their female counterparts.

The relationship between legal knowledge and motivation which stems from discontent deserves attention as well. Several managers I interviewed stated that less-contented workers seemed more willing to report employers' violations to a labor inspection team or to file a case with the arbitration committee for the purpose of pursuing maximum compensation possibly. I found that male workers were generally less content and more prone to complaining, partly because their reference point is male managers rather than peer workers.¹⁰⁷ Several workers I interviewed displayed feelings of anger as well as jealousy when faced with rumors that male managers had spent huge amounts of money, sometimes equivalent to several months' wages, at Karaoke bars in a single night. Even more highly charged feelings erupt when a rumor spreads that a foreign male manager has coaxed a peer female worker into a relationship or when huge wage differences between them and their managers are revealed.¹⁰⁸ Under these conditions, male workers are more likely to seek ways to squeeze high-compensation out of their factories, in dealing with legal disputes and, in so doing, become more motivated to collect and hone their labor-related legal knowledge.

Hypothesis 1: Male workers are likely to have a higher level of labor-related legal knowledge, all other things being equal.

¹⁰⁷ This tendency resonates with existing studies about gender difference, e.g., "the paradox of the contented female worker" by Crosby (1982) and subsequent empirical tests by Hodson (1989) and Phelan (1994).

¹⁰⁸ For instance, this was a main cause of workers' strike at China's Honda factory. See Bradsher, Keith and David Barboza. 2010. Strike in China Highlights Gap in Workers' Pay. *New York Times*, 2010, May 28.

Hypothesis2: Age

In comparison to their younger counterparts, older workers may have a higher motivation to learn about labor laws because they perceive their utility more acutely. Older workers are generally raising families and are thus more concerned about employment stability, higher wages, and benefits including health insurance and housing funds. This tendency is clearer because migrant workers come to settle in urban areas. One manager shared an experience involving an older worker with ten years' tenure in his factory who had asked management if he could purchase social insurance.¹⁰⁹ When the man received a negative response, he immediately reported a grievance to the local labor inspection team. The factory was then subjected to a serious inspection and made to pay a fine. In addition, from the ability and opportunity standpoint, as workers mature, they generally have a wider and more diverse information network plus more experiences and wisdom to grasp and process legal information they encounter.

Hypothesis 2: Older workers are likely to have a higher level of labor-related legal knowledge, all other things being equal.

Hypothesis3: Education

Education offers the basic skills necessary to accept and digest information. Thus, educational level has been considered to be a relevant proxy for the degree of capability in obtaining and processing information (e.g., Bennet 1995, Luskin 1990). Moreover, more years of formal schooling may result in more sustained exposure to and retention of legal information which workers learned directly in classes or acquired through increasing numbers of friends and

¹⁰⁹ Interview with manager, May 2011

contacts in their vocational and school networks.

Hypothesis 3: Better-educated workers are likely to have a higher level of labor-related legal knowledge, all other things being equal.

Hypothesis 4: Work experience

Work experience is viewed as an important proxy explaining a person's enhanced capability to gather and use legal information. More than formal education, work experience gives workers a real-life understanding of what legal knowledge and awareness mean for themselves as well as others. For example, a worker who received her legal provision to a written contract in her previous job is likely to expect one in her present workplace. Another worker who previously worked in a factory where OT premiums were paid according to law is very likely to be motivated to learn why this current employer does not pay overtime. Experience, curiosity and interest encourage such workers to search for relevant legal information or see precedent in relevant news and stories they encounter. Second, having work experience allows one to more easily add and understand new information by building on what she has already learned.

Another important feature of work experience is the information-rich environment of the workplace and its influence on workers' legal knowledge. This is well demonstrated in existing studies (Hodson 2004, Fine 1986, Mutz and Mondak 2006). It should be noted that workers are exposed to frequent, regular contact with their colleagues staying many hours every day (over 10 hours in a China's factory case) in production lines with their workmates. This reality fosters casual conversation in which workers share information about other factories with better wages, sexual harassment and other labor abuses by managers and resulting legal issues. Then, as positions change regularly in the production line, workers are in touch with new colleagues and

new information. Therefore, the workplace has an immense capacity for exposing workers to diverse topics and diverse information.

Hypothesis 4: Workers who have work experience are likely to have a higher level of labor-related legal knowledge, all other things being equal.

Hypothesis 5: Internet access

One noticeable feature of second-generation workers is the amount of time they spend online for either information-search or entertainment purposes. Multiple informants pointed out that the internet has now become the most useful source of information to young workers. The internet offers unlimited information on a variety of matters which the user can gain with relatively little effort (Bimber 2001). The internet enables users to not only seek out simple information at any time, but also examine a specific issue in much greater depth (Althaus and Tewksbury 1999). This “barrier-reducing feature” (Norris 2001) is particularly important to migrant workers who otherwise could not access useful information in an unfamiliar urban area.

Another important characteristic of young workers is the extent of their online interaction. More and more workers are getting together on the internet (e.g., social network sites, various blogs, and online discussion boards). During my field research, I confirmed Zhang’s (2010) account that more than half of all workers are regular bloggers or active participants on web-based discussion boards and social networks. These days, many workers post questions, comments or criticisms on everything from wage issues, to employer violations of labor laws and sexual harassment. I found that, on the locally popular online discussion boards, a number of questions and answers had been posted regarding labor law, furthering workers’ interest and knowledge, and in effect, encouraging new forms of engagement in legal issues.

Hypothesis 5: Workers who have regular internet access are likely to have a higher level of labor-related legal knowledge, all other things being equal.

Hypothesis 6: Newspaper and magazine readership

There has been clear evidence that a higher level of newspaper and magazine readership has an association with greater knowledge (Chaffee and Wilson 1977, Newton 1999, Scheufele and Nisbet 2002). In recent years, the Chinese print media have produced numerous reports and stories about labor laws. Two major respects can be pointed out: the state's new propaganda policy as well as robust competition among the media (Liebman 2005, Stockmann 2008, Gallagher and Stockmann 2008). The state sends a direction that the media publicize populist slogans such as "everyone is equal before the law", and "use the law as a weapon," for the purpose of checking complacent local officials and unethical employers. In turn, the media are increasingly willing to publicize employer wrongdoings in order to attract readers. Sensational and heavily moralistic coverage of exploited migrant workers and bad working conditions are very common today. Through burgeoning media reports, average reader now learns that "workers are entitled to social insurances," "overtime work has a premium of 150 percent, 200 percent, or 300 percent of normal wage", and "employer failure to sign a written contract can benefit workers later with a double-wage recompense."

Hypothesis 6: Workers who regularly read newspapers and/or magazines are likely to have a higher level of labor-related legal knowledge, all other things being equal.

Hypothesis 7: Dispute experience

Previous experience in labor disputes can provide workers with a strong incentive for further

acquisition of in-depth legal knowledge. If a worker is dissatisfied, shamed, or humiliated at her workplace, she may have a higher motivation to learn about related legal knowledge to seek redress for her grievances (Delli Carpini and Keeter 1996). It is noteworthy that some lawyers in China were former factory workers who made the decision to study law and pass their bar exam, after personally suffering from a work injury or being owed wage arrears (Zhang and Smith 2009, He 2009).

Hypothesis 7: Workers with direct or indirect experience involving employer-employee disputes about rights or interests are likely to have a higher level of labor-related legal knowledge, all other things being equal.

Hypotheses 8 and 9: Hometown and length of stay

People who work in their hometowns are likely to have sustained and diverse contacts with family, friends, and former classmates. As conversation containing useful work-related information flows through these networks, participants have better chance of being exposed to related legal information. In addition, the information-rich and on-going nature of local networks allows homegrown workers to gain a better understanding of labor laws over time (Jerit et al. 2006). Those in continuous contact with various information-providing people and environments will come to know something about labor laws and related issues simply by being connected to familiar people and various resources in a way that migrant workers are not.

Hypothesis 8: Local workers are likely to have a higher level of labor-related legal knowledge than migrant workers, all other things being equal.

By similar rationale in Hypothesis 8, the length of a migrant worker's stay in his new community

may influence his level of legal knowledge. Migrant workers who have recently moved to an urban area may lack the necessary social ties and skills to become quickly assimilated to the new environment (Gordon 1964, Alba and Nee 1997). Gradually, however, they can develop diverse contacts with new friends and colleagues, thereby gaining opportunities for further exposure to various information. In addition to this network effect, the information-rich context of an urban area itself is likely to gradually lead to a higher level of legal knowledge, as mentioned previously. Several workers interviewed pointed out the impact of their new urban environment on their legal consciousness.¹¹⁰ When they first arrived in the city and started at their new workplace, they were virtually ignorant of labor laws. Over time, however, their labor-related legal knowledge has steadily increased. It was commonly mentioned that, around 2007 when the new labor law became enacted, they came to learn about labor issues through various channels available, including television programs, newspapers, street postings, and pamphlets offered by local agencies. The quantity and quality of this information is undoubtedly greater in the urban areas where migrant workers currently live than in the rural areas of remote inland China from which many of them came.

Hypothesis 9: Migrant workers who have resided for longer period in urban areas are likely to have a higher level of labor-related legal knowledge, all other things being equal.

METHODS

The research for this study was comprised of extensive fieldwork together with short semi-structured surveys of workers and job seekers in three special economic zones (SEZs) in China conducted from May to September 2011. Short semi-structured interview and survey questions

¹¹⁰ Interview with worker in 2010 and 2011.

were constructed and based on findings from my preliminary field research and on relevant literatures about the characteristics of the new generation of workers in China (e.g., Davis 2000, Pun 2003, Yan 2008, Jacka 2006, Smith et al. 2004, Lee 2007, Chan and Pun 2009, Gallagher 2006).

Due to the complex nature of the questionnaire and absence of exemplary surveys in the literature, it was imperative to check for ambiguity and accuracy. I conducted pilot surveys, not included in this analysis, with 76 workers in region A in Jiangsu Province. The pilot study focused more on identifying missing content and editing for language such as removing awkward wording and expressions. I also checked for any unexpected or irregular patterns in the survey results.

Worker surveys were collected from production workers and job-seekers in electronics industry in three urban economic development zones. Specifically, the production worker surveys were conducted in four electronics factories. The line managers, with whom I had developed a close relationship, understood my research intent and willingly helped me survey their line workers. The line managers and/ or I surveyed workers during their break time, evenings and weekends at factory break room or dormitories. I did not encounter much reluctance on the part of the workers to participate since the survey was anonymous, short, and seemed to pique workers' curiosity. The respondents appeared to enjoy answering this kind of work-unrelated survey, as it was something new for them and a diversion from the way they usually spent their break time. Another source of survey respondents were job-seekers in the electronics industry. I collected surveys at local job centers, where commercial space is lent to nearby factories for recruiting purposes. It is interesting to note that this recruiting process takes an unusually long time, since recruiters have learned not to trust the applicants' education certificates and resumes. Documents

brought by job-seekers are carefully scrutinized and applicants' English vocabulary and math calculation skills are often tested on the spot.¹¹¹ Thus, job-seekers often wait two to three hours for their turn, checking their cellphones or chatting with friends and other job seekers to kill time. It was therefore easy for me to collect surveys from them while they awaited their turn at the recruitment desk.¹¹²

Dependent variable

Assuming that knowledge requires a practical understanding of a subject, I categorized the degree of respondents' legal knowledge in six ways: 1) "Does not know", meaning that the respondent has no knowledge at all of the presented legal provision. 2) "Has heard of it, but does not know anything about it", meaning that the respondent may have heard about the provision in passing but knows nothing about its specifics. 3) "Has minimal understanding of the presented legal provision." I consider knowledge to be "minimal" when the respondent demonstrates basic understanding of one element of the provision, for example, when the respondent is aware that employer provision of a written labor contract is mandatory. 4) "Has some understanding of the presented legal provision." I consider a respondent to have "some understanding" when she is able to provide more details of the provision, such as knowing that "a written contract must be signed within one month." 5) "Has good understanding of it." I assume "good understanding" when a respondent can demonstrate knowledge of specific details as well as *sub-specifics* of the

¹¹¹ In the electronics industry, a test of English terms related to the industry is considered indispensable as workers in production lines need to be able to read basic English words in sorting and assembling electronic parts. A basic math skills test is also important in recruiting workers who will deal with inventory. However, one thing to note is that the criteria for pass vs. fail vary depending upon the degree of labor shortage.

¹¹² Given that the focus in this paper is on second-generation workers (born after 1980), I ruled out surveys answered by workers born before 1980 (a total of 30 surveys) in my analysis.

legal provision. For example, “good understanding” would mean that a respondent not only knows that a “written contract must be signed within a month” but also that “a copy must be given to the worker”. He also would have a beginning understanding of how to seek redress in a case where the employer has violated the law. 6) “Has a thorough understanding, very well informed” meaning that a respondent is very conversant with the specifics of the provision as well as the appropriate grievance procedures.

Respondents’ knowledge was classified according to these six categories for all three provisions: written contracts, social insurance, and OT premiums.

Explanatory variables:

- Gender is measured by dichotomous variables (male=0, female=1)
- Age is measured by subtracting the respondent’s birth year from 2011
- Education is measured by categorical variables (<high school=1, high school=2, >high school=3)
- Work experience is measured by a dichotomous variable (has work experience=1)
- Internet access is measured by a dichotomous variable (has regular internet access=1)
- Newspaper and magazine readership is measured by categorical variables (none at all=0, some=1, much=2)
- Dispute experience is measured by a dichotomous variable (has dispute experience=1).
- Hometown is measured by dichotomous variables (local=1, migrant=0).
- The length of stay is measured by categorical variables (newly arrived=0, less than one year=1, over one year=2).

Insert Tables 7, 8 and 9 about here

RESULTS AND FINDINGS

This analysis aims to determine which individual and environmental characteristics are associated with workers' varying degrees of legal knowledge. First, an overview of the sample composition is provided in Table 7. The sample consisted of 40 percent male workers and 60 percent female workers, all of whom were born between 1980 and 1995. As for hometown, 25.04 percent of workers were local, while 74.96 percent were migrants. Over three-fourths of the workers (83.85 percent) had work experience. A notably large proportion of workers in my sample, 80 percent, are regular users of print media and internet. In looking at our salient dependent variable (level of legal knowledge), it is surprising that over two-thirds of workers have at least a basic understanding of the three major legal provisions addressed in this survey. Table 9 provides the results of my analysis as to the association between socio-demographic variables and levels of knowledge of various legal provisions. Equations 1, 2, and 3 examined the association between socio-demographic variables and level of legal knowledge regarding written labor contract, social insurance purchase, and OT premiums. In general, age, hometown, work experience, internet access, and dispute experience demonstrate statistically significant, positive associations with a higher level of legal knowledge. Newspaper/ magazine readership was somewhat associated. When it is considered alone, the readership shows a statistically significant association with a higher level of legal knowledge regarding written labor contract requirements but not of social insurance provisions and OT premiums. Gender (male) is weakly supported only when it comes to OT premiums. Finally, there is no clear pattern in the association between education and worker's legal knowledge.

Equations 4, 5, and 6 examined the associations between the socio-demographic variables of migrant workers and level of legal knowledge about written labor contracts, social insurance purchase, and OT premiums, respectively. The result is that, while gender and education show no influence, work experience, internet access, dispute experience, and age were largely significantly associated with a higher level of legal knowledge. In particular, work experience was strongly associated with a higher level of legal knowledge across all three legal provisions.

DISCUSSION AND CONCLUSION

The purpose of this paper was to empirically test the associations between socio-demographic factors and workers' level of legal knowledge pertaining to three major labor law provisions. Although somewhat exploratory in nature, this study yields some informative insights regarding workers' legal knowledge in China. At their most basic, the findings of this study demonstrate that the new generation of workers in China is not a homogenous group, but represents differing levels of legal knowledge depending upon individual and contextual factors.

As for specific socio-demographic factors, the findings can be summarized as follows. First, work experience showed consistent, positive strong association with the level of legal knowledge across all three provisions of the labor law. Interestingly, education, the conventional proxy for capability, was not associated with level of labor law knowledge. My interpretation is that this area of legal knowledge is context-specific and experienced-oriented that the general cognitive capability created by formal education is not as helpful as the work-related capability created by work experience in absorbing and retaining information. In addition, the information-rich environment of the workplace in China's unique factory milieu deserves attention. These densely-populated factory zones as well as the factory dormitories may contribute to more

frequent exposure of workers to diverse topics and information, thereby increasing the possibility of workers' acquiring and deepening their legal knowledge.

A second conclusion relates to workers' internet access. My finding shows that a large number of workers have access to the internet through high-tech tools such as computers at internet cafés and smartphones. These electronically "hooked up" workers demonstrated consistently higher legal knowledge across the three legal provisions than those who did not use computers or smartphones. My field research shows that these high-tech tools are the main media through which second-generation workers not only share information about where the best jobs with the best wages and benefits are, news about peers who have won arbitration awards, and even details about the latest sexual harassment cases at the factories, but are also used to search for new information and read news stories. In this sense, the finding that newspaper readership is not strongly associated with level of knowledge is not that surprising, as today's young workers rely more on high-tech tools to obtain news than on print-based sources.

A third conclusion is that the information-rich environment in urban areas is likely to influence a worker's level of legal knowledge. The finding that local workers show higher legal knowledge than migrant workers demonstrates the link between living in a city and being more legally aware. A fourth conclusion is that those who have had previous disputes with management are more likely to have a higher level of legal knowledge. Since they have experience and know-how in seeking redress for past grievances, it is highly likely that they will be primed to search for new knowledge and pay more attention to labor news in their environment. As globalization and economic recession results in more and more business restructuring in China (e.g., factory relocation and M&A), I predict that compensation issues may become so emotionally charged as to motivate workers to gain deeper knowledge of relevant labor laws as they seek redress for

issues related to payment and compensation.

Additional points to note are that 1) age matters across three legal provisions, particularly when it comes to legal knowledge regarding social insurance. It can be surmised that as workers get older, they become more interested in the utility of social insurances, and this motivates them to acquire a higher level of knowledge, 2) male workers showed a higher legal knowledge about OT premiums than female workers. In general, male workers work more overtime and have the primary role as “family provider” as compared to females. These two circumstances can explain why male workers are more conscious about monetary compensation, i.e. OT premiums, 3) while local workers generally demonstrate a significantly higher degree of legal knowledge, the results show that size and significance of the relationship decrease when it comes to OT premiums as compared to migrant workers. My interpretation is that, though many second-generation migrant workers come to urban areas for self-realization and for fun, monetary compensation from overtime work is still a very significant part of their livelihood. Accordingly, they might have a clearer understanding of OT premiums than of other legal provisions. 4) in comparison with length of stay, work experience is a far more critical factor in determining the level of legal knowledge of migrant workers across the three legal provisions. Although migrant workers are exposed to useful and diverse information in urban areas over time, the information is likely to remain passive knowledge. As migrants work for longer periods of time in factories, the information encountered is clarified, digested and filed into memory depending on individual interest and curiosity, again reinforcing that those who either currently work or have work experience are more likely to have more legal information at their disposal than those who do not.

Limitations: This study has several limitations which must be recognized. First, because the data were collected at only one point in time, we cannot ascertain the associations between variables

and legal knowledge for other time periods. However, my preliminary field research between 2008 and 2010 helps to affirm the associations between socio-demographic factors and level of legal knowledge. In a future study, the time period and regions can be expanded, which may verify my findings and produce new unexpected ones. Second, this survey is based on workers and job-seekers in electronics industry located in relatively developed economic zones in the eastern and southern coastal areas. Therefore, it may be difficult to extend generalizations from my findings to all workers in China. The degree of legal knowledge among workers in this study may be skewed high because, overall, the eastern coastal areas are relatively well-developed and the workers in the electronics factories generally have a better education than those in other labor-intensive industries such as toy and garment manufacturing, located in China's inland areas. Future research can expand the industry and region for a more systematic analysis and further-reaching generalizations. Third, this study is confined to the three main legal provisions of Labor Contract Law 2008. Workers may have demonstrated a higher level of knowledge of these three provisions because these provisions have been well introduced to the public throughout the enactment process from 2006 to the present. Accordingly, workers may have far less knowledge of other provisions. Future research would include additional provisions and compare levels of legal knowledge across a wider range.

My study contributes to existing studies in three ways. First, it determines the degree of legal knowledge held by second-generation workers in China, which remains a largely unexamined topic in the literature, and provides informative insights about the associations between socio-demographic factors and level of legal knowledge. Despite the importance of this topic, most studies have only provided sketchy descriptions about the legal knowledge of young workers, who are assumed to comprise a homogenous group. I hope that my research will be a starting

point for further systematic research about different types of second-generation workers in China. Second, my findings have important implications for labor, policy makers, and employers. Given that the Chinese government strongly encourages workers to use the law as their “weapon”, one realistic and effective way for international communities to engage with the authoritarian Chinese regime is to contribute to the spread of specific legal knowledge workers should know and to encouraging workers to use the diverse state-designed grievance procedures available to them. At the same time, the enhanced legal knowledge on the part of workers may pose a potential legal risk to employers who directly violate labor laws or continue illegal workplace practices. Apart from this study’s primary findings, I noted that employers have recently expressed significant concerns about the increase in workers’ legal activism regarding their employers’ labor practices. Numerous managers I interviewed worried that, as workers become more aware of their rights, they may start to report even minor violations of labor laws to the labor bureau when leaving their jobs. Indeed, I learned that many factories I visited over the past four years had been subjected to labor inspections and paid fines for not purchasing social insurance and/ or exceeding OT hour restrictions after workers had reported these violations to local agencies. In this sense, workers’ bottom-up enforcement, to some extent, satisfies the central government’s belief that knowledgeable workers will lead to better accountability among employers. Accordingly, employers in China need to take the growing legal awareness of these young workers into account when determining workplace policies and HR/labor relation practices. In summary, my study provides a breakdown of the level of legal awareness of second-generation workers in China, and provides an empirical test of the links between various socio-demographic variables and levels of legal knowledge. I hope that my research is just the beginning of further systematic study about this new generation of workers in China.

APPENDIX

Table 7: Variable descriptions

Variables	Measure	Category	Percentage	Minimum	Maximum	Mean	Standard Deviation
Legal knowledge 1: Written labor contract	1 (Does not know) to 6 (very well informed)			1	6	3.53	1.19
Legal knowledge 1: Social insurance	1 (Does not know) to 6 (very well informed)			1	6	3.58	1.06
Legal knowledge 1: OT premium	1 (Does not know) to 6 (very well informed)			1	6	3.60	1.09
Gender	Dummy (male=0)	Male	40.61 %				
		Female	59.39 %				
Age	2011-year of birth			16	32	21.95	3.16
Education	Categorical variables (less than high school=0, High school=1, over high school=2)	< high school	27.61 %				
		High school	62.46 %				
		>high school	9.93 %				
Work experience	Dummy (has work experience=1)	Has	88.31 %				
		Has none	11.69 %				
Internet access	Dummy (has regular access to internet=1)	Has	81.28 %				
		Has none	18.72 %				
Readership (newspaper/magazine)	Categorical variables (none=0, some=1, much=2)	No readership	5.56 %				
		Some readership	71.84 %				
		Much readership	22.60 %				
Dispute experience	Dummy (dispute experience=1)	Has	13.92 %				
		Has none	86.08 %				
Hometown (local vs. migrant)	Dummy (local worker=1)	Local	26.92 %				
		Migrant	73.08 %				
Length of stay (in case of migrants)	Categorical variables (newly arrived=0, less than one year=1, over 1 year=2)	Newly arrived	18.91 %				
		< 1 year	22.54 %				
		>= 1 year	58.55 %				

Table 8: Pairwise Correlations

Variable	1	2	3	4	5	6	7	8	9	10	11	12	13
1.Written labor contract**	1												
2.Social insurance**	0.54*	1											
3.OT premiums**	0.42*	0.54*	1										
4.Female	-0.10*	-0.11*	-0.15*	1									
5.Age	0.07	0.24*	0.11*	0.01	1								
6.Education	0.13*	0.12*	0.03	-0.14*	0.00	1							
7.Work experience	0.10*	0.14*	0.15*	-0.07	0.17*	0.09*	1						
8.Internet access	0.14*	0.17*	0.16*	-0.11*	-0.08	0.17*	0.00	1					
9.Newspaper/magazine readership	0.13*	0.09*	0.00	-0.09*	-0.06	0.09*	-0.08	0.09*	1				
10.Dispute experience	0.12*	0.11*	0.08	-0.08	-0.03	-0.05	0.03	0.05	-0.03	1			
11.Hometown	0.12*	0.14*	0.00	0.01	-0.09*	0.11*	-0.18*	0.07	0.14*	-0.02	1		
12.Length of stay (in case of migrants)	0.03	0.20*	0.13*	-0.10*	0.18*	0.04	0.11*	-0.02	0.02	0.03	-0.01	1	
13.Worker (vs. job seeker)	-0.04	0.02	0.19*	-0.09*	0.21*	-0.16*	0.15*	-0.10*	-0.09*	0.05	-0.47*	0.30*	1

*Significance at $p < 0.05$

**Legal knowledge about written labor contracts, social insurance, and OT premiums

Table 9: Results of worker survey analysis

	Locals & Migrants			Migrants		
	Eq.(1) Labor contract	Eq.(2) Social insurance	Eq.(3) OT premiums	Eq.(4) Labor contract	Eq.(5) Social insurance	Eq.(6) OT premiums
Age	0.033+ (0.02)	0.071*** (0.02)	0.026 (0.02)	0.048* (0.02)	0.091*** (0.02)	0.035+ (0.02)
Female	-0.106 (0.11)	-0.097 (0.10)	-0.181+ (0.10)	-0.074 (0.13)	0.069 (0.12)	-0.027 (0.12)
Education	0.069 (0.10)	0.075 (0.08)	-0.022 (0.09)	0.013 (0.11)	0.035 (0.10)	-0.141 (0.11)
Locals	0.388** (0.14)	0.472*** (0.12)	0.263* (0.13)			
Work experience	0.320+ (0.17)	0.401** (0.15)	0.360* (0.16)	0.492+ (0.25)	0.705** (0.22)	0.990*** (0.23)
Internet access	0.306* (0.15)	0.383** (0.13)	0.484*** (0.14)	0.185 (0.16)	0.347* (0.15)	0.320* (0.15)
Newspaper/magazine reader ship	0.276* (0.12)	0.175+ (0.10)	-0.013 (0.10)	0.301* (0.13)	0.038 (0.12)	-0.099 (0.12)
Dispute experience	0.344* (0.16)	0.271* (0.13)	0.149 (0.14)	0.446* (0.18)	0.312* (0.16)	0.244 (0.16)
Worker (vs. job-seeker)	0.128 (0.13)	0.232* (0.11)	0.495*** (0.12)	0.202 (0.13)	0.215+ (0.12)	0.462*** (0.12)
Length of stay (in case of migrants)				-0.072 (0.09)	0.132+ (0.08)	0.024 (0.08)
_cons	1.788*** (0.49)	0.890* (0.42)	2.237*** (0.44)	1.569** (0.60)	0.017 (0.53)	1.756** (0.55)
Sample N	449	444	440	302	298	294
F	4.04***	8.24***	5.78***	2.87**	6.29***	5.78***
R-sqr	0.077	0.146	0.108	0.081	0.164	0.155
dfres	439	434	430	292	288	284

+ p<.10, * p<.05, ** p<.01, *** p<.001

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CHAPTER 6

LABOR LAW ENFORCEMENT AND COMPLIANCE IN CHINA:

THE ROLES OF LABOR SOCIAL INTERMEDIARIES AND EMPLOYERS’

PERCEIVED VIOLATION COSTS

In recent years, attention to China’s labor standards has been reemerging (SACOM 2011).¹¹³

International media and NGOs have shown that many “made-in China” electronic consumer goods that we use are produced on the basis of human costs.¹¹⁴ Indeed, there is wide evidence that Chinese workers suffer low wages, excessive overtime, and health and safety risks (Chan 2001, Pun 2005, Cooney 2007a, 2007b, Kuruvilla et al. 2011).

Yet it would be too hasty to conclude that this kind of labor abuse is the same across the board in China. The author’s extensive field research over the past four years reveals that certain factories in certain regions show higher compliance than others. Why and how does this variation exist across regions and across factories? This question deserves close attention for practical and theoretical reasons. Practically speaking, this issue relates to ongoing discussion concerning labor regulations, i.e., how to enhance compliance and improve labor standards internationally, and is particularly pertinent to developing countries, which always suffer from a lack of capacity to enforce labor laws (Baccaro 2001, Elliot and Freeman 2003, Burrow 2012). This question is also important from a theoretical perspective, because existing explanations that have focused primarily on either a top-down state sanction or a voluntary non-state approach (e.g., corporate

¹¹³ Also see Samuelson, Kristin. 2012. Worker rights: The fruits of 1 million's labor. *Chicago Tribune*, February 19, 2012; Weir, Bill. 2012. ABC Nightline, Apple's Chinese Factories: Exclusive. *ABC Nightline*. February 20, 2012.

¹¹⁴ Duhigg, Charles and David Barboza. 2012. In China, the Human Costs That Are Built Into an iPad. *NY Times*, January 26, 2012.

social responsibility policies) are increasingly considered to be questionable (e.g., Gunningham et al. 2003, Clapp 2008).

Regarding this variation across regions and across factories in China, I shed light on the impact of indirect societal intervention on labor law compliance, beyond the top-down state intervention and private voluntary regulation. Based on extensive qualitative field research and establishment-level surveys, I show the increasingly important role of labor social intermediaries (e.g., local journalists, lawyers, labor consultants, regional union cadres, labor-related NGOs, and legal clinics) in enhancing labor law compliance in recent China. I find that, in certain regions, strong, diverse activities of labor social intermediaries contribute to creating a strong legal environment that significantly increases the perceived violation costs of employers who either directly violate labor law or continue high legal risk practices. In this strong legal environment, employers are accordingly motivated to move towards compliance.

My study also explores the employers' compliance mechanism, which has been understudied in regulatory compliance literature. By highlighting the rise of feedback practices by outside professionals (e.g., through conferences, seminars, and training programs, regarding the recent labor legal environment and employers' response strategies), my research provides a more nuanced account of the compliance mechanism by which employers come to be motivated to work towards compliance. My findings show that an employer's use of external feedback, which I call "external formalization of HR," partially mediates this "external pressure-organizational compliance" relationship.

The paper proceeds as follows. After a brief review of the literature on labor law compliance, I develop hypotheses that describe the variation in compliance across regions and factories, focusing on why and how employers are motivated to comply with labor law. I then describe my

sample and empirical method, and present the results. I conclude by discussing this study's contribution and limitations, as well as future research.

PRIOR RESEARCH

I review two popular accounts of how employers are motivated to comply with labor law. One approach, rooted in rational choice perspectives of the law and organizations, pays attention to the direct effects of state legal intervention and the economic sanctions that it causes. Here, organizations are viewed as rational choice actors that respond to state sanctions and their possible costs, maximizing their economic interests. This approach draws mainly on deterrence theory in regulatory compliance literature (Becker 1968, Stigler 1971, Tullock 1974). Scholars such as Becker (1968) and Stigler (1970) suggest that the regulated will comply with regulations when the expected punishment associated with non-compliance, namely, objective violation costs, exceeds the costs of compliance. As objective violation costs are determined by “the probability of detection and the severity of punishment”, the solution for higher compliance would be either heightened inspections or strengthened legal provisions. Although it appears convincing, this approach has been criticized. It is pointed out that the deterrence approach tends to overestimate the role of law and enforcement in enhancing compliance, and conversely, to underestimate the role of other factors (such as firm incompetence and ignorance including management's lack of relevant knowledge) (Bardach and Kagan 1982, Gunningham et al. 2003, Kagan and Scholz 1984). Empirical studies question the deterrence impact and the compliance-sanctioning relationship (Gray and Scholz 1981, Braithwaite and Makkai 1991).

When it comes to China, this explanation based on a top-down approach is more dubious, because the Chinese context defies the underlying assumption of the deterrence approach (a strategic calculation of objective violation costs in a predictable regulatory environment). China

has essentially a complaint-driven employment rights protection system. Top-down preventive inspection, which the deterrence approach assumes, is very rare, and local labor bureaus (specifically, inspectors) rely exclusively on workers to identify violators. Thus, the reality is that only when a complaint is received, do labor inspectors go to the site and inspect it. Therefore, a top-down deterrence-based approach cannot fully account for regional variation regarding labor law compliance.

A second approach highlights private firms' efforts to enhance working conditions. Given the weakness or absence of state enforcement, corporate-based voluntary enforcement has emerged as a major approach. Proponents of this approach argue that this approach can provide alternative solutions to the question of "how to improve labor standards." They argue that the corporate-based approach is realistically more viable and more efficient in today's weak enforcement situation, particularly in developing countries (Ruggie 2003, Santoro 2009, Scherer et al. 2006, Cragg 2005, Jenkins 2001). For the past decades, many multinational corporations have created self-regulatory systems to deal with bad working conditions in their supplier factories as the state agencies did in the past (Amengual 2010). In the face of strong, external pressures (e.g., The Nike case), they voluntarily set codes of conduct and force their supplier factories to follow the rule. They enforce this rule by themselves, employ third-party monitors, or conduct joint auditing (O'Rourke 2003, 2006). If a supplier factory does not satisfy this rule (or codes of conduct), this factory will receive diverse sanctions (e.g., from a simple warning to revocation of contract). The essence of this private governance system is that well-designed and implemented private regulations could effectively push supplier factories towards compliance. This approach appears to be a feasible solution at a glance, but there has been considerable debate regarding this private governance system among academic scholars, practitioners, and activists (e.g., Esbenshade 2004,

Manic 2004, Bandy and Bickham Mendez 2003, Bickham Mendez 2005, Frundt 2005, Businessweek 2006). The shortcomings pointed out are as follows: private codes are considered to be not clear as to critical provisions, such as freedom of association (Anner 2008). In addition, private auditors are weak in detecting and addressing a variety of complicated workplace issues, while they are good at addressing simple and visible issues (Manic 2004, Barrientos and Smith 2006). Even when auditors do detect these sensitive matters, they tend to be quiet due to harsh market competition among third party monitoring firms (Anner 2008, Seidman 2007).

In China, this approach of private voluntary regulation has been subject to criticism. As is often the case in other countries, most CSR monitoring cannot address the root causes and, instead, stop at dealing with simple and easy items such as checking the presence of a suggestion box (e.g., Verite 2004, CLW 2009, 2010). The recent article about Apple's supplier monitoring in China in *The New York Times* well illustrates the structural limitations of corporate-initiated compliance efforts.¹¹⁵ More importantly, I point out that this approach is not relevant in explaining the regional and factory-level variation which I focus on, because private voluntary regulation can only cover a very small number of factories in China. In my sample, less than five percent of all factories receive MNC monitoring, and it is said that the auditors stay only 3 to 4 hours in a factory and that the monitoring activities center on visible issues such as child labor and non-payment of wages.

LABOR SOCIAL INTERMEDIARIES, INDIRECT ENFORCEMENT

Are there some indigenous elements that make Chinese labor law work, either directly or by new, emerging interactions between social actors and traditional state enforcement mechanisms? I extend my attention beyond direct intervention by top-down state agencies, towards an indirect

¹¹⁵ Duhigg and Barboza. 2012. In China, the Human Costs That Are Built Into an iPad. *NY Times*, January 26, 2012

intervention mechanism underway at China's local levels. Regarding regional variation, my research exposes the increasingly important role of social intermediaries in increasing the violation costs that employers in China perceive. In essence, I argue that, in certain regions, diverse activities of labor social intermediaries contribute to creating a strong legal environment that significantly increases the perceived violation costs of employers who either directly violate the law or continue high legal risk practices. In this strong legal environment, employers are accordingly motivated to move towards compliance or less violation.

By labor social intermediaries, I mean the individuals or organizations that have a relatively high level of technical knowledge of labor/employment issues, and engage in labor law enforcement and compliance in diverse ways. Labor intermediaries include various labor-related professionals, such as local media (journalists), law firms (labor lawyers), barefoot lawyers, labor consulting firms (labor consultants), regional trade unions (union cadres), labor arbitrators, labor-related NGOs (activists), and legal clinics (clinic staff). What I mainly focus on in this paper is the fact that these actors contribute to increasing employers' uncertainty and concerns, although these intermediaries may have differing interests.

Insert Figure 7 about here

These actors engage in labor law enforcement and compliance in such ways that they facilitate workers' bottom-up legal activism and/or directly publicize employer wrongdoings and arouse public attention at the local level. Before progressing into the details, I need to address two important institutional changes in recent China. The first one is that the Chinese government strongly encourages aggrieved workers to use the law as their weapon. Facing increasing labor unrest, the government has shown a growing interest in the positive role of dispute resolution

mechanisms (Qiao 2008, Dong 2008). Now, its priority is to resolve workers' grievances in a timely manner within the state-designed legal framework, thereby preventing worker grievances from spilling out beyond legal channels and threatening the regime. With this rationale, the government enacted a series of pro-labor laws in 2008. The Labor Contract Law (2008) strongly induces aggrieved workers to bring their grievances to legal mechanisms, with fairly high returns for filing workers.¹¹⁶ Moreover, the New Mediation and Arbitration Law (2008) has certainly streamlined the grievance procedures; this law encourages aggrieved workers to "use the law as their weapon," (Gallagher 2005) with its adoption of a series of new measures such as simplifying the arbitration procedures, shifting the burden of proof to employers, canceling arbitration fees, extending filing periods, and introducing partial awards. As a result, over the past decade, reporting and filing by individual workers against employers has become increasingly widespread. The official data from the labor department show that labor disputes climbed from 135,000 in 2000 to 684,000 in 2009 (see Figure).¹¹⁷

The other noticeable institutional change is that the Chinese government strongly welcomes bottom-up "input" activities in certain areas. Examples of "acceptable" bottom-up topics include environmental protection, food safety, and worker's rights protection. As long as these issues are involved, the government strongly encourages societal actors to openly raise them. In particular, worker's rights protection has recently become a priority to the Chinese leadership, in conjunction with related issues such as income inequality, labor abuse, wild-cat strikes, and a

¹¹⁶ Some of the examples of fairly high financial returns are: provisions 10 and 82 in the Labor Contract Law mandate that an employer must enter into a written labor contract with a worker within 30 days. Failure to do so leads to a penalty of paying the worker double wages for any time served without a written contract. If an employee works for 12 months without a written contract, she is then entitled to sign a non-fixed term contract. Provisions 46 and 47 stipulate that workers can voluntarily terminate their labor contract and still receive severance pay equal to one month's wages if the employee resigns by reason of employer violation, such as non-purchase of social insurance or overtime hour/wage violations.

¹¹⁷ China Statistical Yearbook, China Labour Statistical Yearbook

spate of worker suicides.¹¹⁸ The Chinese government is quite concerned about legitimacy, especially among the Chinese people disadvantaged during rapid economic development. The recent tolerance of wild-cat strikes (as long as the disputes remain over economic issues such as wage increase and severance compensation) and continuous increase in minimum wage reflect the government's efforts to deal with the increasingly serious side effects that the China's rapid economic development has caused. Therefore, as slogans like "harmonious society" and "inclusive growth" show, the government has become favorable to societal actors' involvement in looking out for the marginalized. Another purpose is to enhance policy implementation via societal actors' watchdog roles. Societal actors are seen as useful ears and eyes gathering information from below and monitoring the activities of powerful local officials and capitalists (Nathan 2003, Shambaugh 2008). This "input" from the lower ranks provides valuable information regarding street-level bureaucratic corruption, which supplements restricted administrative resources. Lorentzen (2008) emphasizes that the monitoring activities of local actors have become particularly useful to the regime because market reforms have made corruption and employer exploitation of workers "both more prevalent and harder to detect." Therefore, the current situation is that, armed with state slogans such as "harmonious society", societal actors can actively and safely expose employer wrongdoings to the public and the state agencies.

Against this current favorable institutional environment in China, labor social intermediaries stand out in two activities. Above all, the facilitation of workers' bottom-up legal activism deserves close attention. These intermediaries help workers understand their legal rights and represent workers in the state grievance procedures, thereby significantly increasing the

¹¹⁸ The author's interviews with local government officials, local consultation committee members, and local scholars. Also see China's Labor Market: The Next China, *Economist*, Jul 29, 2010

perceived violation costs of employers. The role of the media has received great attention recently (Liebman 2005, Stockmann 2008, Hassid 2008). Legal consulting columns and their active and continuous focus on high awards from labor arbitration committees or courts has greatly enhanced workers' legal knowledge and created high expectations for workers who determine to take legal action. In a similar rationale, scholars like Chen (2003, 2004) and Gallagher (2007) indicate that legal aid centers run by the local trade unions provide workers with legal education and consultation, represent workers at arbitration committees or in court, and promote public discourse on the labor rights issue. This type of legal aid not only helps workers incorporate real legal language into their fights against employers, but also lets workers learn about how to strategically make use of the current system in a rightful way (Chen 2004, Gallagher 2007). In similar ways, lawyers (including barefoot lawyers), college legal clinics, and migrant NGOs are all contributing to enhancing workers' legal knowledge and awareness. It is of note that these actors often cooperate with one another to produce better outcomes for themselves and for workers. One example is the cooperation of local trade unions and lawyers. In many Chinese local areas, young public interest lawyers provide regular legal consultation to migrant workers at the street meetings held by local trade unions. It should be noted that together the organizational advantages of local trade unions and the human services of lawyers produce more stable frequent legal consultation to migrant workers than the services provided by either one alone. In summary, the active facilitation of workers' bottom-up legal activism contributes to increasing the uncertainty and concerns of employers, particularly employers who continue traditional illegal workplace practices.

Another important role of these intermediaries is to expose unethical employers' wrongdoings to the public. These activities increase employers' perceived violation costs by bringing

government intervention or hurting employers' reputation. Media coverage often calls for immediate labor inspection (Liebman 2005). Higher-ranking local officials often order a spontaneous inspection directive of the problematic employer revealed in the previous day's newspaper or investigative television report. Therefore, most small employers who are off the radar of local inspectors are very sensitive to the possibility of negative news coverage. On the other hand, larger companies, particularly foreign MNCs, worry more about reputational damage. A series of damning news articles about the employment practices of McDonald's and KFC in China are good examples of how this is true. In each case the company's use of dispatch labor was legal, but the sensational reports of the practices forced them to change wages and hiring procedures in order to calm public outcry. In similar ways, local trade unions (including their legal clinics), migrant NGOs, and lawyers increasingly publicize employers' wrongdoings. These actors are more eager to directly and visibly challenge violating employers in order to solicit local government subsidies and/or make themselves (or their organizations) visible (e.g., Zhang and Smith 2009, He 2009). These actors' increased initiative in protecting worker rights has caused a large number of previously hidden labor disputes to come to the surface. As a result, these activities have contributed to creating local-level norms that unethical employers should be punished. One HR informant expressed his concern by saying, "these societal actors look very weak individually, but are collectively bringing about serious risk to employers over time."¹¹⁹ Given all these points, I set forth the following hypothesis:

Hypothesis 1: Employers located in the region with strong labor social intermediaries will show more compliance than employers in the region with less strong labor social intermediaries, with other things being equal.

¹¹⁹ Field interview in Shanghai in May 2010

Insert Figure 8 about here

Compliance mechanism

Thus far, I have addressed the direct relationship between heightened perceived risk and greater compliance in China. However, I suggest that this direct relationship alone is not sufficient to catch the dynamics underway in contemporary Chinese workplaces. My extensive field research reveals that other factors also take part in this “external pressure–organizational compliance” relationship. Here, I seek to provide more nuanced view of the mechanism by which employers come to be motivated to work towards compliance. In essence, I argue that an employer’s use of external feedback (by attending seminars and training held by outside experts regarding labor law compliance and a revamp of HR/labor practices), which I call “external formalization of HR,” partially mediates this “external pressure-organizational compliance” relationship.

A firm’s external formalization of HR

The anxiety over the uncertainty regarding the external environment and a firm’s inherent search for solutions may create a perceived need of employers (as well as HR staff), who have less experience and knowledge of the legal issues or legal environment, to turn to outside experts. I emphasize that this need for external advice has substantially increased in present-day China due to the unique Chinese context. Currently, most employers have little knowledge of what is the exact requirements under the situation of a huge gap between the reality and the laws on the book. The critical point in this situation is that the current labor enforcement is a totally complaint-based one.¹²⁰ In an extreme case, even an employer who ignores labor law outright

¹²⁰ More than 90 percent of the managers interviewed confirmed that there had been no preventive labor

can be fine as long as an employee does not raise an issue. One relevant case I encountered during my field research was that one employer, whose factory covered mandatory social insurance for 80 percent of the workers, was worrying more about the potential legal risk than another employer, whose insurance coverage was less than 30 percent of workers in the factory. Accordingly, employers are eager to know what is a “less-costly, but less risky” level of non-compliance. External professionals may exploit this uncertainty and aggressively market themselves as professional providers of feasible solutions. It is important to note that, while these professionals provide technical knowledge and expertise, they often exaggerate the current situation to their advantage. This way, they induce nearby by-stander employers to buy their solutions, that is, to attend the seminars and training sessions they hold. This story resonates with a body of research about professionals’ roles in US personnel formalization processes, which shows that the status of the personnel professional has been dependent on environmental threats to organizations (e.g., Jacoby 1985, Edelman et al. 1992, Baron et al. 1986, Dobbin and Sutton 1998). These studies indicate that an unfavorable and uncertain legal environment enhanced the prestige and power of these professionals. Under this logic, given the current legal environment in China, labor professionals are likely to have a strong voice in employers’ understanding of labor law enforcement and compliance.

Another point to note from my findings is that the relationship between HR staff (in absence of HR staff, general staff in charge of HR functions) and external HR/labor professionals is largely reciprocal. Internal HR staff tends to prefer to attend external training or education opportunities. Because they are quite busy with other general HR jobs, they have a strong desire to learn quick-fix solutions about their high-risk HR/ labor practices. This has become more important now

inspection for the past five years.

because recent frequent changes in labor regulations have caused ongoing headaches for internal HR staff who might become personally responsible for any financial and reputational damage caused by any mistake or misunderstanding of labor law. It is also notable that internal HR staff often makes use of solutions from outside in order to push their ideas to top management. During my field research over the past four years, I noticed several cases in which HR staff was able to revamp labor practices based on the authority of outside experts, despite the production managers' strong objections. Therefore, given the persistent search of employers, not to mention HR staff, for external expertise under the current uncertain labor legal environment,

Hypothesis 2: Employers in the region with strong labor social intermediaries are more likely to seek external formalization of HR than employers in the region with less strong labor social intermediaries.

External formalization of HR and labor law compliance

Although they are understudied in the economic approach to organizational compliance, experts' knowledge and ideas are considered to be an important source of organizational responses to external environments in institutional theory. DiMaggio and Powell (1983) stresses that the professionals act as "an important source of isomorphism." They suggest that normative isomorphism has a close relationship with the ascendance of professionals, because these would-be professionals seek to influence others while making efforts to build and legitimize their occupational expertise and authority. The studies about the role of professionals in workplace practices have documented the prominent role played by labor/HR professionals in constructing models of compliance with legal mandates (e.g., Selznick 1969, Edelman et al. 1992, Westin and Feliu 1988, Reuter 1988). Baron et al. (1986) emphasized the critical role of personnel

profession in diffusing workplace practices. Edelman et al. (1992) showed that professions play an important part in diffusing organizational practices, and suggest that the new environment created by these professionals has a noticeable impact on the response of employers to environmental threats. My field research also indicated that the factories whose staff attended outside labor/HR education and training largely followed the professionals' advice sincerely in the end, with some variation, depending upon each factory's internal situation.

When it comes to the effectiveness of this kind of outside education/training programs and seminars, it is likely that an organization's internal environment is important. That is, one possibly may think that an organization that is ready to accept outside expertise is more likely to follow the given prescription than one that is not ready. Following this logic, when an HR department is present independently, or when internal HR staff has more power and status within an organization, the effect of outside training and education should be stronger, thereby leading to more compliance.

A further question is whether employers' use of external feedback mediates the relationship between region (due to the strength of labor social intermediaries) and degree of compliance. If the relationship is fully mediated, variation in the degree of compliance may be due to employers' use of external feedback. If the relationship is partially mediated, variation in the degree of compliance may be partly due to employers' use of external feedback. Given these points, I set forth the following hypotheses:

Hypothesis 3: Employers using external feedback (attendance at seminars/education and training programs regarding labor law compliance and HR revamp) are more likely to show heightened compliance than those who are not.

Hypothesis 3-1: The presence of an HR department will amplify the effect of external feedback on the degree of compliance.

Hypothesis 3-2: The status and power of an HR department will amplify the effect of external feedback on the degree of compliance.

Hypothesis 4: External formalization of HR will partially mediate the relationship between the legal environmental factors and the degree of compliance.

METHODS

This study is based on extensive fieldwork and establishment-level surveys of the electronic (parts) industry in region A and region B. First I conducted preliminary fieldwork during 2009 and 2010, in which I took on different roles as a part-time labor consultant, a factory HR intern, a participant-observer at various labor-related social intermediaries, and an ethnographer on the assembly line. Building on this background knowledge and experience, in 2011 I conducted numerous in-depth interviews with various local stakeholders and collected establishment-level surveys.

Research Context: 131 establishments in the electronics (parts) industry in two regions

Region: Hypothesis 1 of this article is *when other things are equal, employers in the region with stronger labor social intermediaries are more likely to show more compliance than employers in the region with less strong labor social intermediaries*. To test this hypothesis, I chose two regions (regions A and B) where all factors other than the strength of the intermediaries are similar. My goal is to determine whether the regional variation in social labor intermediaries' activeness and strength leads to variation in the outcome (degree of labor law compliance).

These two special economic zones (SEZs) are similar in terms of economic situation (minimum

wage 1420RMB), primary industry (electronics industry), factory composition (a large proportion of foreign factories), enforcement style (very rare preventive inspection and, in general, complaint-based inspection), and administrative environment and political atmosphere (located in the same province).

Industry: The sample for my work was drawn from factories in the electronic (parts) industry, which has received close attention in recent years. China is currently the world's largest producer of numerous electronics products (Pecht 2006). However, despite remarkable quantitative development, most producers in the electronics industry (in particular, contract manufacturers) suffer harsh competition in the push for lower costs, because the majority of jobs in Chinese factories are still in low-value-added production sectors such as assembling and testing (MakeItFair 2008, 2009, WEED and SACOM 2008). Not surprisingly, it is reported that employers in the electronics (parts) industry routinely violate legal provisions and subject their workers to labor abuses such as unpaid or underpaid wages, excessive overtime, and dangerous workplace environments (Chan 2001, Pun 2005, China Labor Bulletin 2010, BusinessWeek 2006). Recent reports about labor abuses at Foxconn, a major supplier for Apple, well illustrate contract manufacturers' endless pursuit of lower production costs and its bad impact on labor (SACOM 2011). Given the importance of the electronics industry and the recent controversies about labor abuses there, it is worth examining labor practices in this industry.

Establishment: I used the establishment as the unit of analysis, following prior research on variation in employment practices (e.g., Osterman 1994, 2000, Colvin 2003). Prior research has indicated that establishment-level respondents largely have more accurate knowledge about employment practices than those at divisional or corporate levels. It is important to note that most factories in my sample are establishment-based ones. That is, most factories have only one

establishment.

Sampling: Sampling in my research consisted of a combination of random sampling and purposeful snowball sampling, which is realistically possible and acceptable in a China study (Sun et al. 2007, Kim et al. 2010, Allen et al. 2010, Rawski 2001). Sampling has always been a major difficult issue among China scholars. While large-size random sampling is ideal to minimize sampling error and sampling bias, it is nearly impossible in China due to the lack of access or difficulty accessing systematic information about the organization population (Carlson et al. 2010, Heimer et al. 2006, Kim et al. 2010). In field research, I faced similar barriers mentioned above. These economic development zones did not reveal the information about factories within their boundary at their website. I made a visit to the development zone to ask for access to the list but was told that such information is not available to the public. Alternatively, I employed multiple *guanxi* networks, for instance, through large MNC, labor arbitrators, lawyers, local scholars, but the relevant officials whom I met responded that they were not allowed to reveal company information by law. I could only learn about the approximate number of electronics industry factories in each development zone. Given the situation, my alternative contact point would be diverse company associations (e.g. of industry and ownership etc.). However, in the regions where my surveys were collected, Chinese (including electronics industry association), EU (except region A), and American company association did not exist, but had only informal ad-hoc meetings.

To address the difficulties of systematic sampling in China as well as the concerns about convenience sampling, I employed multiple approaches. That is, my sampling consisted of a combination of partial random sampling based on a list of Korean and Taiwanese company associations, and purposeful snowball sampling of European, American, Chinese and Japanese

companies. I approached the factories of European, American, Hong Kong, and Chinese factories in a different way. My main sources for these factories were secured from the semi-formal HR manager meetings in these two development zones. In each region, semi-formal, high-level HR manager meetings are held and consist of Chinese HR managers of Chinese, American, European, non-Chinese Asian companies and joint ventures (e.g. joint ventures of Americans and Chinese). In each region, the number of acting members of these semi-formal meetings is 17 to 20. These HR managers tend to stay in the development zone for a significant period and maintain close relationships with numerous HR managers across factories. With over 10 years of work experience, they compete and cooperate by exchanging information and ideas; they help each other find new jobs, share blacklist workers (e.g. strike leaders), share wage and benefits information, maintain close relationships with staffing agencies, and help HR managers of small plants (often, a supplier factory in their supply chain) address numerous HR/IR issues such as labor shortages and labor disputes. It has become apparent recently, in the face of real labor shortages and the series of new labor laws, that these meetings to exchange information are increasingly more frequent. This source was important to my purposeful sampling. First, I was able to involve Chinese HR managers from European, American, and Japanese target establishments, which were few but should be included in my population. Second, I was able to involve “under-the-radar” HR managers from a variety of factories representative of several variables in my research. At semi-formal meetings in the two regions, some key HR managers who heard about my research introduced me to HR managers from various establishments and, actually, helped me interview and collect data. I took care to choose establishments that represent various characteristics in my research in order to minimize any potential bias this sampling might introduce.

Given that HR managers' society is somewhat closed and densely networked entity, I have made concerted efforts to become understood and trusted in order to get in the door. Particularly, I have sought to assure them of the confidentiality of my research and that my results would provide them with new ideas and information. I was able to enhance my visibility and trust among them by frequent contact. I participated in local HR/IR related seminars, HR managers' informal dinner meetings, and outside sports activities.

Interviews and data collection administration: The data collection procedure involved surveying HR managers in person at an establishment, which took 45 minutes to one hour. I employed face-to-face surveys in order to gain interviewees' trust, to increase the number of usable, returned surveys, and to address any concern that email or fax-based self-reporting may have caused.¹²¹ The survey participants were the highest-level HR managers in each establishment, who had a long tenure in their plants. Therefore, the survey respondents in my study are the most knowledgeable people in the factories as far as HR/labor practices and policies are concerned. The labor practices and interviews with the management were closely double-checked and complemented by qualitative interviews with workers and nearby staffing agencies which possessed diverse real information about the factories in this economic zone.

It is worth to note that HR managers in China work extreme overtime, usually 6-7 days a week. I would emphasize that the dense population in development zones, the huge numbers of young workers from all provinces and all walks of life, and China's exceedingly rapid economic development have turned the industrial development zones into a hotbed of the most unbelievable anecdotes. Due to all kinds of unexpected

¹²¹ In case that the face-to-face interview was not possible, I closely double-checked the data with available data collected from nearby staffing agencies, labor lawyers, local officials, workers, and local social intermediaries.

situations in factory complexes (e.g. electrical shortages¹²², labor shortages, and worker accidents¹²³), HR managers tend to reside in the factory or a nearby place. Time-wise, it was fortunate that I could use my limited stay in China flexibly, since meetings could be held anytime from 6:00 a.m. to 11p.m., Monday to Sunday. Indeed, some HR managers wanted me to visit establishments on Sundays or late evenings when they were relatively free. Therefore, I could conduct up several site visits and surveys a day. The down side is that the meetings were often rescheduled at the last minute due to urgent situations that called the HR managers away.

Survey questionnaires were made based on related literatures and field interviews. I mainly referred to literatures on organization sociology, regulations, and industrial relations (e.g. Dobbin and Sutton 1998, Dobbin and Kelly 2007, Kelly 2010, Baron et al. 1986, Sutton et al. 1994, Winter and May 2001, Bardach and Kagan 1982, Levy 1997, Braithwaite and Makkai 1991, Colvin 2003, Edelman 1990).

It should be noted that my questionnaires are mainly based on establishment-level objective variables referring to the above literature. The questions are detailed specifically so as to avoid a subjective interpretation which may cause ambiguity. I sought to minimize the concern about single respondent from each establishment, by employing the highest HR manager at each factory who is best aware of the factory's situation as well as HR/IR issues. I also want to emphasize that, since hierarchy is important in Chinese culture, the response by the highest HR manager largely was closely related to

¹²² The national high-tech development zones are no strangers to electricity shortages due to exorbitant increases in electricity usage. Therefore, large-size factories tend to have their own emergency generator facility.

¹²³ The average age of production workers in the high-tech development zones is 21. The range of production worker age is from 16 to 25 in general.

actual HR/IR policies and practices.

The questionnaires are in Chinese, but were originally constructed in English. I employed conventional translation and back-translation, done by two Chinese HR scholars. I then gave the English and Chinese versions of the questionnaires to ten Chinese HR managers to check for awkward wording and missing contents. Finally, I conducted pilot surveys with HR managers of respectively ten factories in two industrial development zones. The first pilot surveys were done with HR managers in areas of suburban Shanghai. I also conducted pilot surveys with HR managers in Guangzhou's hi-tech development zone. My pilot study focused more on editing for language and missing contents, checking for the existence of regional variations in terms and expression, and to check for an unexpected irregular pattern in survey results.¹²⁴

Dependent variable:

Degree of compliance in OT hour regulation: I chose the OT hour provision as a dependent variable. The issue of OT hours has attracted attention practically and theoretically. Although current law allows no more than 36 hours/ month (Article 41, Labor Law), excessive overtime is a chronic problem in China (Verite 2004, FLA 2008). In my study, only one out of 131 factories complied with this provision. Given this situation, it would be meaningless to follow the dichotomous measure of compliance vs. non-compliance which most previous studies used (Ashenfelter and Smith 1979, Ehrenberg and Schumann 1982, Gray and Shadbegian 2005). Instead, I analyzed the degree of non-compliance in OT hours, which is here defined as the distance from 36 hours. That is, if a factory's OT hours/month is 70 hours, then the distance

¹²⁴ Given the difficulty of access, the pilot study had limitation for statistical analysis. Therefore, I focused more on awkward wording and expression and checking for irregular pattern.

would be 44 hours (by subtracting 36 from 70). I used this distance as a proxy for degree of non-compliance.

Independent variables:

Region: as explained previously, I chose two regions by research design. Region A is characterized by a strong legal environment due to diverse and active labor social intermediaries, while region B is characterized by a less strong legal environment. Each region is measured by a single dichotomous variable (1=region A, where there exist strong labor social intermediaries; 0=region B, where there exist weak labor social intermediaries).

Externalization formalization of HR: it is measured by an attendance at external labor/HR education conferences (or HR/labor-related seminars) or training programs (1=yes, 0=no).

HR department presence: the presence of an HR department is captured by a single dichotomous variable (1=yes, 0=no).

HR's status and power: I used four survey questions, following an idea from Braithwaite and Makkai (1991). The four questions asked respondents to indicate on a seven-point Likert-type scale the degree of HR's status and power within the establishment. Specifically, the questions were about the degree of decision-making authority, the degree of bottom-up say, the degree of final say, and the degree of involvement of HR staff in policies and strategies. The four questions were loaded onto a single factor, and Cronbach's alpha was 0.69. Given that this research is a study of exploratory nature, the result is acceptable.¹²⁵

Control variables:

¹²⁵ The four questions are 7 Likert scale questions from 1(completely disagree) to 7(completely agree). They are: 1) Regarding HRM/LR issues, top management delegates decision-making authority to the HRM department. 2) HR manager or department actively advises top management about HR/LR issues. 3) HR department has a final say on most HRM/LR issues. 4) HR/LR department is actively involved in developing relevant company policies and strategies.

I include a range of controls for several other factors thought to influence labor law compliance. Regulatory compliance literature indicates that non-compliance is significantly correlated with organizational characteristics including establishment size, age, and union presence (e.g., Ashenfelter and Smith 1979, Gunningham et al. 2003, Deily and Gray 1991, Gray and Scholz 1991). In addition, OT-related studies point out that excessive overtime is influenced by order fluctuation as well as the proportion of last minute order among the whole orders (Verite 2004, Locke et al. 2007). I also considered China-specific factors such as ownership and the ratio of local workers (versus migrant workers from inland China). Details about specific control variables included are as follows.

Size: Size matters in two ways. Regarding the relationship between size and the external formalization of HR, Blau (1970) suggests that personnel administration will be differentiated as the size becomes bigger. Therefore, following the literature (Blau 1970, Blau and Schoenherr 1971, Kalleberg and Van Buren 1996), one might reasonably think that larger organizations tend to formalize diverse HR/ labor functions including externalization formalization of HR. The second consideration relates to the relationship between size and compliance. Current studies show mixed results. For example, one body of studies (e.g., Gunningham et al. 2005, Gray and Mendeloff 2005) found a great effect of, respectively, EPA inspections and OSHA inspections on smaller workplaces, while Thorton et al. (2009) argues that smaller firms are less sensitive (thereby less likely to respond) because they are less visible. Similarly, the larger organizations are more likely to attract attention from the media, NGOs, and government (King and Lenox 2000, Arora and Cason 1996, Hettige et al. 1996). Given these points, I include controls for the size of the workforce, measured as the natural log of total employees in the establishment.

Age: Stinchcombe (1965) argues that managers build organizational structures and adopt

practices prevalent at the time when an organization was established. Related, older organizations tend not to change (Stinchcombe 1965, Selznick 1957). This idea is confirmed by literatures on practice adoption and compliance (Dobbin and Sutton 1998, Barron et al. 1986, Sutton et al. 1994). I include controls for age of establishment, measured as the difference between the year of 2011 and the year published.

Ownership: In international management literature, it is well established that foreign firms suffer from a lack of local legitimacy (Zaheer 1995, Zaheer and Mosakowski 1997, Zaheer and Zaheer 1997). According to this literature, foreign firms in host countries become easy targets for local stakeholders. Their small mistakes tend to be magnified by the local media, while obvious violations of the law by local firms are often overlooked not only by the local media but also by law enforcement institutions. Therefore, subsidiaries of foreign companies need to adopt socially desirable practices to moderate the disadvantages of being foreign, regardless of those practices' efficiency. This kind of phenomenon, that foreign-owned firms in host countries have disadvantages associated with being foreign, is called "liability of foreignness" (Zaheer 1995). Given this, I include controls for ownership. It should be noted that I have followed locally-accepted categorization – domestic (Chinese), semi-Chinese (Taiwanese and Hong Kong), and other countries – and measured this with categorical variables (domestic=0, semi-Chinese=1, and other foreign countries=2).

Union presence: Given the recently increasing role of unions in China, I include controls for union presence. In principle, grassroots unions can express their members' interests regarding HR/ labor policies and labor law compliance in China (2001 Trade Union Law). For example, when facing excessive overtime, enterprise unions can ask management to lower the OT hours. As an alternative way, enterprise unions may report employer violations to labor inspection

teams or file cases with local arbitration committees, seeking redress for their members' grievances.¹²⁶ In summary, I consider the possibility that the unionization drive and union activities in China may influence an employer's use of external feedback as well as his labor law compliance.

Order fluctuation and last-minute deal: Existing studies and reports indicate that overtime hours tend to be influenced by buyers' order fluctuation and degree of last-minute deals (Verite 2004, Locke et al. 2007). Therefore, I include controls for order fluctuation and last-minute deals, measured by a single survey question of 5 Likert scale type.

Local vs. migrant workers: Existing literature indicates that demographic factors may influence organizational practices and strategies (Pfeffer 1983, Edelman 1992, Hillman, Shropshire, and Cannella 2007). For instance, women workers cause flexible work arrangements (Deitch and Huffman 2001). Colvin (2003) considers the proportion of female employees to represent the potential threat of discrimination litigation. My preliminary field research found that, in the Chinese context, local workers tend to be more demanding, knowledgeable, and have more resources available than do migrant workers. Therefore, it is plausible that the proportion of local workers vis-à-vis migrant workers has an association with employers' perceived risk, thereby motivating employers to move overtime hours closer to the legal 36 hours/month. Given this point, I include controls for the ratio of local workers versus migrant workers in the establishment.

¹²⁶ With regard to this issue, existing literature, which is based on a western context, indicates that union effects on HR functions or other programs are unclear (Pfeffer and Cohen 1984, Edelman 1990, Sutton et al. 1994, Sutton and Dobbin 1996, Kelly and Dobbin 1999).

Insert Tables 10, 11, and 12 about here

RESULTS

Tables 10, 11 and 12 provide an overview of the sample composition, pairwise correlations, and the results of establishment-level survey analysis, respectively. Equation 4 in Table 12 shows that the degree of non-compliance regarding OT hours was significantly lower in region A, where diverse strong labor social intermediaries exerted influence on labor law enforcement/ compliance, in accordance with the prediction of Hypothesis 1 ($p < 0.05$). Equation 1 in Table 12 shows that region (a proxy for the strength of labor social intermediaries) was associated with employers' use of external feedback, that is, externalization of HR ($p < 0.1$), providing support for Hypothesis 2. Equation 3 in Table 12 analyzes whether external feedback influences the degree of non-compliance. The result shows that a firm's external feedback relationship is associated with OT hours in an establishment ($p < 0.05$), supporting Hypothesis 3. Equation 5 in Table 12 analyzes whether there exists partial mediation between regional variables and the degree of non-compliance. Partial mediation would occur if the size and significance of the relationship (of Equation 4) were reduced (Baron and Kenny 1986, Muller et al. 2005, Doellgast 2008, Batt and Colvin 2011). Results show that external formalization of HR functions partially mediated the relationship between regional variable and the degree of non-compliance, supporting Hypothesis 4. The change in R^2 between Equation 4 and Equation 5 shows the added explanation power by the variable (employer's use of external feedback). That is, external feedback of HR/ labor professionals matters in explaining labor law compliance in the Chinese context. Equations 6 and 7 in Table 12 test the interaction effects in the relationship between employers' use of external feedback and the degree of non-compliance. As expected, the effect of external

feedback on the degree of non-compliance is more salient when an HR department exists ($p < 0.05$) and when HR has higher status and power internally ($p < 0.05$), thus supporting Hypothesis 3-1 and 3-2.

I also find some interesting results from the control variables. Equation 2 in table 12 indicates that organizational variables (age, size, ownership, order fluctuation, last-minute deal, and union), which have been proved in western contexts,¹²⁷ did not receive support here. They did not exert influence on labor law compliance in my sample factories in China. One possible interpretation is that most of the establishments in my survey are too labor-intensive to be influenced by organizational factors which have been proved in western contexts. In this sense, the effect of 1) regional variable (due to indirect societal pressures by social intermediaries) and 2) employers' use of external feedback on labor law compliance is more surprising. On the other hand, employers' use of external feedback (what I call, "external formalization of HR") was associated with age (negatively, $p < 0.01$), size (positively, $p < 0.05$), and ratio of migrant workers (negatively, $p < 0.05$). As predicted, older establishments were less willing to receive external feedback, larger establishments had differentiated HR/labor feedback relationships, and a higher proportion of local workers vis-à-vis migrant workers in an establishment was associated with more attention to external feedback, given the potential legal risk.

Insert Table 13 about here

I also provide Table 13, which includes another region in other Province. Although region and employers' use of external feedback are still strongly associated with the degree of non-compliance (OT hours), other variables (especially, interaction variables) might have been

¹²⁷ For example, see Ashenfelter and Smith (1979), Gunningham et al. (2003), Deily and Gray (1991), Gray and Scholz (1991).

influenced by the factors reflecting provincial differences (e.g., differences in local stakeholders' attentiveness to OT hour violations, differences in the purpose of employers' use of external feedback, the differences in local inspection and enforcement style, and possible unexpected external factor – labor unrest). Therefore, interpretation requires some caution, when including this region.

DISCUSSION AND CONCLUSION

The results presented in this paper demonstrate that indirect societal intervention can substantially increase employers' uncertainty and concerns and, in turn, employers are motivated to comply with labor law. It is surprising to find these effects in the Chinese context where we conventionally assume a “very weak civil society,” and “outright sweatshop factories.” At the same time, by showing the mediating effect of outside professionals' feedback in this direct “external pressure – organizational response (or compliance)” relationship, the analysis presented here provides a more nuanced account of employers' compliance mechanisms than do past top-down deterrence based approach.

The findings can be summarized as follows. First, employers in the region with strong labor social intermediaries were more likely to comply with OT hour provisions than employers in the region with less strong intermediaries. I suspect that the role of these intermediaries in enhancing compliance is, with regional variation, more salient in the Chinese context due to several unique characteristics of the country: a socialist legacy, including a history of bottom-up revolution, and the continued power of previous socialist institutions (e.g. state-controlled media and trade unions); the recent implementation of a series of pro-labor policies and laws well known for their streamlined legal processes for complaints and high financial rewards for filing workers; and a

repressive authoritarian regime that, while harshly punishing collective action, sends a clear signal that it pays for social intermediaries and workers to individually use the law as their weapons against employer wrongdoing.

The second finding is that employers' use of external feedback partially mediates this direct "external pressure – organizational response (or compliance)" relationship. This finding is important for two reasons. First, although I highlight the role of societal intervention in compliance beyond the direct top-down intervention of the state, my first argument still draws on the economic approach (calculation of violation costs). Whereas my second finding closely relates to the normative isomorphism in the institutional approach (DiMaggio and Powell 1983, Sutton et al. 1994, Edelman et al. 1992). As employers (as well as HR staff) do not have a clear cue about what is an acceptable compliance level these days, they come to rely on outside experts who are thought to have more knowledge and expertise in labor issues. In this situation, outside feedback (via conferences, seminars, and education/ training programs regarding the recent labor legal environment and HR revamp strategies) contribute to shaping employers' understanding of labor law compliance. It is important to note that a series of labor laws and recent labor unrest have provided aspiring HR/ labor professionals with precisely such a basis for asserting claims of expertise. The current situation in China overlaps the ups and downs of HR professionals' status and power, which were caused by the changes in environmental conditions, in the first half of the 1900s in U.S. (Jacoby 1985, Baron et al. 1986).

A third finding concerns the interaction effect of employers' use of external feedback on compliance. The result presented in this paper shows that the presence of an HR department and the high status and power of an HR staff within a factory respectively intensify the effect of external feedback on compliance. In addition, as my qualitative field research indicates, HR staff

and external professionals largely maintain close relationships. Though the rise of HR professionals is still at an early stage in China, this phenomenon deserves close attention. Given the increasing labor unrest and the Chinese government's clear emphasis on pro-labor policies, it is predicted that HR/ labor professionals are likely to gain more power and authority.¹²⁸

Several limitations in the data should be taken into account when interpreting results. First, this chapter was based on the survey data in two regions with non-random sampling method. Thus, one might reasonably point out that it is therefore difficult to make generalizations to all of China from my findings. In addition, other factors unexplained in my study would possibly account for regional variation and compliance variation. Further, although I took extra care to collect data in order to minimize potential problems of non-random sampling, it is still possible that this factor may have influenced the results. However, the complementary findings from the extensive qualitative field research over the past four years (including over 500 interviews with HR managers, local officials, workers, and diverse labor social intermediaries in over 10 economic development zones in China) help to strengthen the claim that, under the current Chinese context characterized by high legal risk and uncertainty, diverse social intermediaries strongly influence employers' policies and practices, and the activeness and strength of these intermediaries vary upon regions. I believe that, because local, in-depth reports such as this one are key to developing a better understanding of labor law enforcement and compliance, my study provides a starting point for further research.

Here, I stress that collaborative research is necessary, given the difficulty of this kind of compliance study in the Chinese context. Realistically, a study done by one person has clear limitations; it is not easy to choose a large number of regions, controlling for factors other than

¹²⁸ In this sense, it is worth conducting a comparative study between China and U.S. (for American context, see Dobbin and Sutton 1998).

explanatory variables. Further, face-to-face interviews and site visits, which are desirable to minimize potential problems in this kind of compliance study, depend largely on the researcher's contextual background and networks. I was able to do site visits and face-to-face interviews in these two regions mainly due to the social networks and experiences that I have accumulated during my past four years' preliminary field research. In this sense, future research can benefit from collaborative research in which each researcher in charge of a specific region conducts site visits and face-to-face interviews across industries, possibly with the random sampling method, based upon the individual researcher's in-depth contextual background. In this way, future research can expand across the industries and regions for a more systematic analysis and further-reaching generalizations.

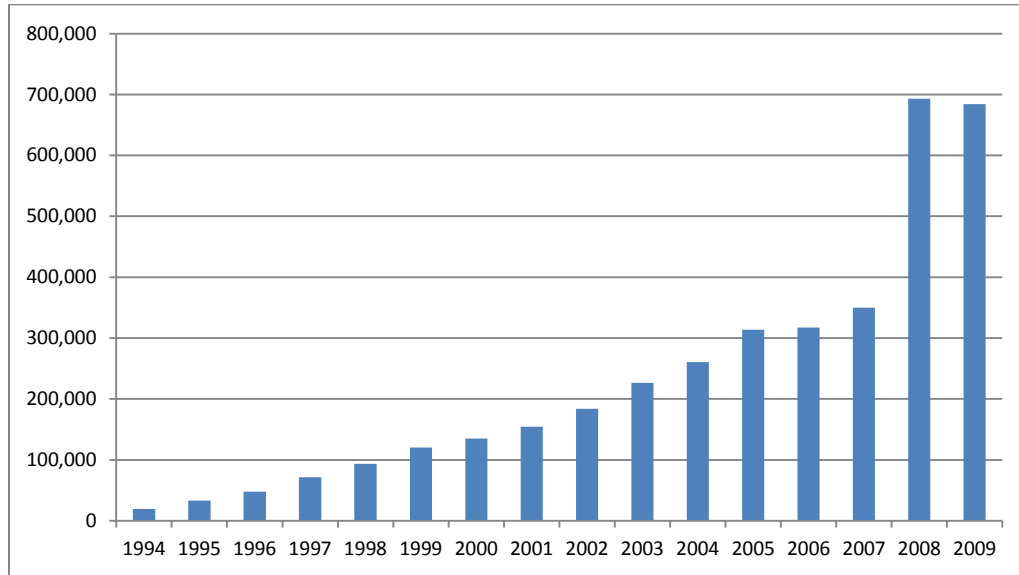
A second limitation is that the dependent variable was measured by a single item, overtime hours exceeding 36hours/month. This reflects the reality that other possible variables are difficult to measure and clearly categorize, given the complexities of workplace practices (e.g., regarding written labor contract requirements and social insurance purchase). However, the author's site visits over the past four years (over 200 factories) helps to assert that other workplace practices largely followed the pattern of OT hour practices. Future research can expand the dependent variables towards extensive workplace practices and can verify whether other variables show results similar to the OT hour results.

My study contributes to the literature on regulation in general and on enforcement of labor standards in particular. First, I identify a Chinese phenomenon – strong societal pressures (by diverse social labor intermediaries) on employers – which is different from current enforcement typologies but contains several unique virtues. By doing so, I advance ongoing discussions about the varieties of labor law enforcement and compliance. Second, I offer a more pluralistic view of

labor law enforcement beyond the traditional “employer-government” oriented approach. This is important from a public policy standpoint in that the Chinese case can offer a feasible solution to ongoing discussion about global regulation, i.e., how to enhance compliance and improve labor standards internationally. In addition, my study of Chinese workplaces enriches the existing literature by presenting a more variegated picture of compliance, in contrast to prior writing that presents a monolithic picture of widespread abuse of labor standards in China. On a theoretical level, my findings highlight that the institutional approach also matters in the Chinese context; I broke down the compliance process and demonstrated that external feedback, which is sought after by worried employers in the face of a strong legal environment, and its normative impact partially mediates the relationship between external pressures and employers’ compliance.

APPENDIX

Figure 7: Increase in labor dispute cases in China (number of cases accepted for disposal)



Source: China statistical yearbook and China labour statistical yearbook (1994-2010)

Figure 8: Conceptual Framework

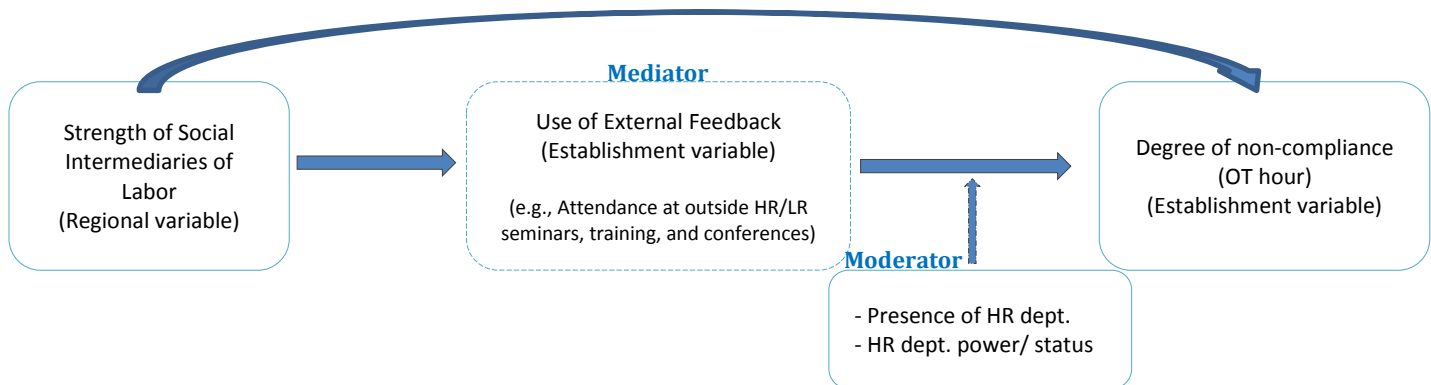


Table 10: Variable descriptions

Variable	Definition	Mean	SD	Min	Max
Organizational factors (controls)					
- Size	Natural logarithm of the number of employees	5.93	1.46	2.71	10.36
- Age	Years since founding	8.54	4.08	1	19
- Ownership	Categorized into three: -Chinese = 0 -Semi-Chinese (Hong Kong/ Taiwanese) = 1 -Foreign = 2	1.10	0.71	0	2
- Union	Binary variable for presence of union in establishment	0.53	0.50	0	1
- Order fluctuation	Single 5 Likert scale question: From 1(significantly influenced) to 5 (no influence)	3.18	1.18	1	5
- Last-minute order	Single 5 Likert scale question: From 1(significantly influenced) to 5 (no influence)	2.85	1.10	1	5
- Ratio of local workers vs. migrants from inland China	Percentage of local workers among all employees	0.26	0.26	0	1
Independent variable (incl. mediating variable)					
- Region	Binary variable Region A=1, region B=0	0.37	0.48	0	1
- Use of external feedback	Binary variable for use of external feedback	0.60	0.49	0	1
- Presence of HR dept.	Binary variable for presence of HR dept.	0.81	0.39	0	1
- HR power/ status	Four-items 7 Likert scale questions: Averaging four items	4.95	1.01	1.5	7
Interactions:					
- Presence of HR dept. x use of external feedback	Interaction	0.52	0.50	0	1
- HR power & status x use of external feedback	Interaction	3.11	2.62	0	7
Dependent variable					
- Degree of non-compliance in OT hour regulation	Hours above 36 hours The difference between OT hour and 36	54.36	21.37	0	124

Table 11: Pairwise Correlations

Variable	1	2	3	4	5	6	7	8	9	10	11	12	13	14
1. OT hours	1													
2. EF**	-0.22*	1												
3. Presence of an HR dept.(HR)	-0.09	0.16	1											
4. HR power & status (PS)	-0.02	0.25*	0.21*	1										
5. Region	-0.33*	0.23*	0.19*	0.22*	1									
6. Age	0.05	-0.11	-0.01	-0.11	-0.06	1								
7. Size(log)	-0.12	0.24*	0.31*	0.24*	0.18*	0.23*	1							
8. Ownership	-0.18*	-0.05	0.07	0.02	0.20*	0.00	0.14	1						
9. Ratio of migrants	0.26*	-0.18*	-0.10	-0.12	-0.49*	-0.14	0.10	-0.12	1					
10. Order fluctuation	0.02	0.04	-0.13	0.08	-0.05	0.03	-0.05	0.02	-0.02	1				
11. Last-minute deal	-0.03	0.05	-0.03	0.15	-0.03	0.01	-0.04	-0.11	-0.08	0.34*	1			
12. Union presence	-0.12	0.07	0.08	-0.01	0.11	0.45*	0.27*	0.09	-0.15	0.02	-0.01	1		
13. EF*PS	-0.28*	0.84*	0.51*	0.22*	0.27*	-0.06	0.29*	0.01	-0.16	-0.05	0.03	0.03	1	
14 EF*HR	-0.23*	0.96*	0.16	0.43*	0.25*	-0.11	0.28*	-0.06	0.18*	0.08	0.07	0.03	0.82*	1

* Significant at $p < 0.05$

** EF: Employers' use of external feedback

Table 12: Result of establishment-level survey analysis: Degree of non-compliance (OT hours)

	Eq.(1)*	Eq.(2)	Eq.(3)	Eq.(4)	Eq.(5)	Eq.(6)	Eq.(7)
ORG. Controls							
Age	-0.162** (0.06)	0.64 (0.52)	0.354 (0.53)	0.452 (0.52)	0.233 (0.53)	0.407 (0.55)	0.403 (0.55)
Size(lg)	0.407* (0.17)	-2.079 (1.35)	-1.229 (1.40)	-0.888 (1.42)	-0.309 (1.45)	-0.535 (1.49)	-0.450 (1.62)
Ownership 1	0.539 (0.59)	-0.992 (5.09)	-0.591 (5.03)	-4.555 (5.22)	-3.809 (5.20)	-2.501 (5.20)	-2.625 (5.20)
Ownership 2	-0.922 (0.61)	-6.678 (5.33)	-7.994 (5.30)	-5.434 (5.26)	-6.642 (5.27)	-8.009 (5.21)	-5.414 (5.26)
Ratio of migrant workers	-2.248* (1.08)	19.636* (7.78)	15.001+ (8.01)	10.338 (8.59)	7.504 (8.68)	8.203 (8.54)	9.014 (8.76)
Order fluctuation	0.173 (0.18)	0.819 (1.67)	1.099 (1.65)	0.803 (1.64)	1.041 (1.63)	1.693 (1.64)	0.759 (1.63)
Last-minute deal	0.061 (0.19)	-0.605 (1.81)	-0.541 (1.79)	-0.639 (1.78)	-0.581 (1.77)	-1.551 (1.78)	-0.275 (1.75)
Union presence	0.327 (0.46)	-4.700 (4.21)	-4.053 (4.17)	-3.912 (4.15)	-3.457 (4.12)	-5.533 (4.17)	-5.126 (4.19)
Region	0.967+ (0.58)			-11.782* (4.98)	-10.432* (5.00)	-10.490* (4.91)	-9.338+ (5.03)
Employer's use of external feedback (EF)			-8.387* (4.09)		-7.056+ (4.08)	33.576+ (19.22)	10.091 (9.27)
HR power and status (PS)						6.930* (2.77)	
EF*PS						-8.469* (3.84)	
Presence of an HR dept. (HR)							9.281 (7.13)
EF*HR						-	-21.203* (9.84)
_cons	-0.068 (1.40)	87.633*** (11.97)	92.307*** (12.03)	94.593*** (12.11)	97.728*** (12.15)	66.123*** (17.12)	88.779*** (13.15)
sample Size	131	131	131	131	131	131	130
F	chi2:29.17***	1.96+	2.26*	2.43*	2.53**	2.74**	2.59**
R-sqr		0.114	0.144	0.153	0.174	0.218	0.21
dfres		122	121	121	120	118	117

+ p<.10, * p<.05, ** p<.01, *** p<.001

Eq.(1)*: logit analysis for Employers' use of external feedback(EF)

Degree of non-compliance (OT hours): D.V.

Region: I.V.

Employers' use of external feedback (EF): M.V.

EF* PS, EF*HR: Interaction

Ownership 1: Semi-Chinese (Hong Kong and Taiwanese), Ownership 2: Foreign

Table 13: Result of establishment-level survey analysis: Degree of non-compliance (OT hours)*

	Eq.(1)*	Eq.(2)	Eq.(3)	Eq.(4)	Eq.(5)	Eq.(6)	Eq.(7)
Org. Controls							
Age	-0.091*	0.466	0.328	0.056	-0.126	0.036	-0.303
	(0.04)	(0.37)	(0.37)	(0.39)	(0.39)	(0.40)	(0.39)
Size (log)	0.399**	-0.781	0.332	0.486	1.376	1.214	3.087+
	(0.14)	(1.36)	(1.39)	(1.42)	(1.42)	(1.47)	(1.58)
Ownership 1	-0.043	-1.46	-2.893	-3.113	-3.269	-3.965	-4.428
	(0.54)	(5.07)	(5.00)	(5.32)	(5.22)	(5.40)	(5.18)
Ownership 2	-1.092*	-0.954	-3.021	0.643	-1.592	-2.821	-2.638
	(0.50)	(5.02)	(4.98)	(4.92)	(4.89)	(4.93)	(4.85)
Ratio of migrant workers	-1.086	17.464*	14.283*	7.833	5.576	6.897	4.616
	(0.77)	(7.25)	(7.20)	(7.72)	(7.61)	(7.65)	(7.59)
Order fluctuation	0.179	1.418	1.608	1.838	2.188	2.554	2.041
	(0.15)	(1.58)	(1.55)	(1.57)	(1.54)	(1.57)	(1.53)
Last-minute deal	0.067	-0.74	-0.481	-0.896	-0.777	-1.139	-0.59
	(0.17)	(1.84)	(1.81)	(1.81)	(1.77)	(1.81)	(1.78)
Union Presence	0.685+	-4.191	-2.712	-3.173	-1.759	-3.799	-1.036
	(0.37)	(3.95)	(3.91)	(3.86)	(3.82)	(3.92)	(3.81)
Region2	-1.572**			-1.215	-4.428	4.946	-3.214
	(0.52)			(4.88)	(4.91)	(5.01)	(4.91)
Region3	-0.467			-16.203**	-16.992**	-17.362***	-16.020**
	(0.55)			(5.18)	(5.08)	(5.15)	(5.08)
Employer's use of external feedback (EF)			-11.051**		-11.300**	17.869	-11.733**
			(3.94)		(3.94)	(19.41)	(3.96)
HR power and status (PS)						3.152	
						(2.94)	
EF*PS						-5.731	
						(3.86)	
Presence of an HR dept. (HR)							-9.941+
							(5.48)
EF*PS							-1.210
							(4.76)
_cons	0.181	81.676***	85.148***	88.584***	94.340***	79.757***	95.188***
	(1.14)	(10.71)	(10.58)	(11.23)	(11.19)	(16.69)	(11.48)
Sample N	190	190	190	190	190	188	189
F		1.22	2.00*	2.13*	2.76**	2.53**	
	chi2:37.84***						2.92***
R-sqr	(pseudo) 0.153	0.051	0.091	0.106	0.146	0.159	0.178
dfres		181	180	179	178	174	175

+ p<.10, * p<.05, ** p<.01, *** p<.001

Eq.(1)*: Logit analysis for Employers' use of external feedback(EF)

Degree of non-compliance (OT hours): D.V.

Region: I.V.

Employers' use of external feedback (EF): M.V.

EF* PS, EF*HR: Interaction

Ownership 1: Semi-Chinese (Hong Kong and Taiwanese), Ownership 2: Foreign

*Including all three regions

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CHAPTER 7

CONCLUSION AND DISCUSSION

This concluding chapter begins with a summary of the findings from this study. I then turn to this study's implications, contributions and limitations.

Summary of structure and findings of the dissertation

The dissertation explored labor law enforcement and compliance in contemporary China's workplaces. Specifically, the dissertation aims to accomplish three purposes. The first purpose is to identify the emerging Chinese model of labor law enforcement and compliance, namely, bottom-up enforcement model (Chapters 2 and 3). The second purpose is to closely examine two new critical actors that are critical factors in this bottom-up legal activism. The dissertation brought workers and social intermediaries to the fore in the second part of the dissertation (Chapters 4, 5, and 6). The third purpose of my dissertation is to examine how this bottom-up pressures influence HR/labor practices in China's workplaces (Chapter 6).

Chapter 3, followed by a critical assessment of existing approaches in Chapter 2, identified an emerging Chinese situation. I first highlighted an increasing variation in enforcement and compliance, as well as heightened uncertainty and concerns on the part of employers. I then proposed a more pluralistic, pragmatic approach, beyond the traditional dyadic "local government-employer" approach, based on extensive fieldwork in China. I stressed that the state agency is not the sole source of pressure on employers for better labor standards, but that two new actors – second-generation workers and various social intermediaries – play an increasingly important role in influencing labor law compliance. I argue that these diverse bottom-up pressures contribute to heightening employers' perceived violation costs and, in turn, employers are motivated to comply with laws.

Chapters 4 and 5 delve into these two new actors. At their most basic, these new actors increasingly engage in labor law enforcement and compliance in various ways, which is in sharp contrast to the picture previously depicted in the academic literature and media coverage in the past. The findings of Chapter 4 show that various social intermediaries contribute to increasing employers' perceived violation costs, thereby strongly motivating employers to move up to standards. Specifically, Chapter 4 identified three mechanisms by which these intermediaries contribute to better enforcement and compliance in today's China's workplace: 1) complementing state enforcement, 2) facilitating workers' bottom-up legal activism, and 3) directly challenging violating employers by bringing in state intervention and/ or hurting employer reputation. Chapter 5 indicates that the new generation of workers in China is well informed about recent labor laws in general. This finding is also confirmed by the numerous employers whom I interviewed during my field research in China. Equally important, Chapter 5 shows that these workers are not a homogenous group, but represent differing levels of legal knowledge depending upon individual and contextual factors. It is of note that the information-related factors such as work experience and internet access significantly influence the level of legal knowledge of these workers.

The findings of Chapter 6 demonstrate that indirect societal intervention substantially increase employers' uncertainty and concerns and, in turn, employers are motivated to comply with labor law. It is surprising to find these effects in the Chinese context where we conventionally assume a "very weak civil society" and "outright sweatshop factories." In addition, Chapter 6 shows that employers' use of external feedback partially mediates the direct "external pressure-organizational response (or compliance)" relationship. This finding suggests that institutional theory can help better explain the current Chinese situation, and resonates with the US

phenomenon – the ups and downs of HR professionals’ status and power in the first half of the 1900s in U.S. (Jacoby 1985, Baron et al. 1996).

Implications and contributions

My dissertation contributes to the literatures on regulation, labor law enforcement, comparative employment relations and China studies. First, I identify a Chinese phenomenon, bottom-up enforcement of labor laws by diverse stakeholders. I argue that the bottom-up enforcement is responsible for increasingly wide variation that I find in China’s workplaces. Current approaches, such as the state-centered approaches that focus on deterrence or compliance (e.g., Becker 1968, Bardach and Kagan 1982, Piore and Schrank 2006) and non-state approaches that focus on the role of NGOs or triggered corporate social responsibility policies (e.g., Elliott and Freeman 2003, Rodriguez-Garavito 2005, Locke et al. 2007), do not fit the Chinese phenomenon and do not fully account for the wide variation in compliance that I find in Chinese workplaces. My framework of “bottom-up” regulation that incorporates the role of two actors (second generation workers and various social intermediaries) can better explain the wide variation in contemporary China’s workplaces. By articulating a model of non-state bottom-up enforcement, I contribute to an important policy debate in global regulation i.e., how to enhance compliance and improve labor standards. Particularly, the Chinese case can offer a feasible solution to developing countries which suffer from understaffing, undertraining, under-equipment of enforcement agents. In addition, my study of Chinese workplaces enriches the existing literature by presenting a more variegated picture of compliance, in contrast to prior writing that presents a monolithic picture of widespread abuse of labor standards in China.

The second contribution of the dissertation is to provide a more nuanced understanding of under-studied topics, second-generation workers and social intermediaries. Despite growing awareness

of a heightened legal consciousness among China's second-generation workers, there exists little empirical research about the topic. Similarly, when it comes to social intermediaries, the studies done by scholars in political science, law, and sociology seem to narrowly explore individual issues such as workers, government, NGOs, trade unions, and media through the lens of their particular discipline. As a result, previous studies tend to overlook how these actors have exerted an increasing influence on employers. Given the situation, my dissertation provide a detailed account of how these actors increasingly engage in labor law enforcement and thereby motivate employers to either move up to standards or revamp their HR/ labor practices.

Last but not least, my dissertation breaks down the compliance process on the part of employers, which has largely remained as black box in regulatory compliance literature. My research provides a more nuanced account of the compliance mechanism by which employers come to be motivated to work towards compliance. In particular, my findings show that an employer's use of external feedback partially mediates this "external pressure-organizational compliance" relationship. By doing so, my findings highlight that the institutional approach also matters in the Chinese context, theoretically.

Limitations

The dissertation has several limitations, however. First, it focuses on workers and factories in one industry – electronics industry in China and therefore, it may be difficult to make a generalization to all workers and factories in China from my findings. However, in management and industrial relations literature, industries have been a central analytical framework (e.g., Colvin 2003). A focus on one industry can rule out alternative explanations and also enable the study to have an opportunity to consider historical developments of a chosen industry. In this sense, my study is meaningful as a starting point for further exploration. Future research can

expand the industry and assess whether the findings of the dissertation can be applicable to other industries.

Second, a small N problem (a relatively small number of cases) and the sampling place limit my quantitative analysis. Short survey regarding workers was based on workers and job-seekers in relatively developed economic zones. Therefore, it may be difficult to extend generalizations from my findings to all workers in China. Further, the degree of legal knowledge among workers in the study may be skewed high because, overall, the eastern coastal areas are relatively well-developed and the workers there have a better education than those in other areas. In addition, worker survey is confined to the three main legal provisions of Labor Contract Law 2008, which has been well exposed to workers due to huge debate around enactment. Similarly, establishment survey was collected in only two regions with non-random sampling method. Therefore, it is possible that these factors might have influenced the results.

Future research needs to take these factors into account and benefit from a more systematic sampling and choice of places. Here, I emphasize that collaborative research is necessary, given the difficulty of this kind of compliance study in the Chinese context, as mentioned earlier.

Future research can benefit from collaborative research in which each researcher in charge of a specific region conducts site visits and face-to-face interviews across industries, possibly with random sampling method, based upon the individual researcher's in-depth contextual background. In this way, future research can expand across the industries and regions for a more systematic analysis and further-reaching generalizations.